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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2014 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 21, 2014. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 21, 2014.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2014 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2014 supplement pamphlets and in the bound volumes of the Code.

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TITLE 14

CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

Law reviews. — For survey article on cases in the areas of corporate, securities, partnership, and banking law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 55 (2003).

CHAPTER 2

BUSINESS CORPORATIONS

Law reviews. — For survey article on cases in the areas of corporate, securities, partnership, and banking law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 55 (2003). For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

ARTICLE 1

GENERAL PROVISIONS

PART 1

SHORT TITLE AND RESERVATION OF POWER

14-2-101. Short title.

Law reviews. — For article, "Georgia Condominium Law: Beyond the Condominium Act," see 13 Ga. St. B.J. 24 (2007). For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

JUDICIAL DECISIONS

Cited in Stephens v. McGarrity, 290 Ga. App. 755, 660 S.E.2d 770 (2008).

14-2-104. Effect of order for bankruptcy relief upon powers and duties of corporation.

(a) Any corporation, an order for relief with respect to which has been entered pursuant to the federal Bankruptcy Code (11 U.S.C. Section 101, et seq.), may put into effect and carry out any decrees and orders of the court or judge in such bankruptcy proceeding and may take any corporate action provided or directed by such decrees and orders, without further action by its directors or shareholders. Such power and authority may be exercised, and such corporate action may be taken, as may be directed by such decrees and orders, by the trustee or trustees of such corporation appointed or elected in the bankruptcy proceeding, or a majority thereof, or, if none be appointed or elected and acting, by designated officers of the corporation, or by a representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation.

(b) Such corporation may, in the manner provided in subsection (a) of this Code section, but without limiting the generality or effect of the foregoing, alter, amend, or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute, or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its articles of incorporation, and make any change in its shares, or any other amendment, change, or alteration, or provision, authorized by this chapter; be dissolved, transfer all or part of its assets, merge or effect any share exchange in connection with any action taken under this Code section; change the location of its registered office, change its registered agent, and remove or appoint any agent to receive service of process; authorize

and fix the terms, manner, and conditions of, the issuance of bonds, debentures, or other obligations, regardless of whether convertible into shares of any class or series, or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class or series; or lease its property and franchises to any corporation, if permitted by law. No shareholder shall have the right to dissent under Article 13 of this chapter with respect to such shareholder's shares in connection with any action taken under this Code section.

(c) Articles or a certificate of any amendment, correction, merger, share exchange, or dissolution, made by such corporation pursuant to this Code section, shall be filed with the Secretary of State in accordance with Code Section 14-2-120, and, subject to Code Section 14-2-123 and subsection (c) of Code Section 14-2-124, shall thereupon become effective in accordance with its terms and the provisions thereof. Such articles, certificate, or other instrument shall be made, executed, and acknowledged, as may be directed by such decrees and orders, by the trustee or trustees appointed or elected in the bankruptcy proceeding, or a majority thereof, or, if none be appointed or elected and acting, by the officers of the corporation, or by a representative appointed by the court or judge, and shall certify that provision for the making of such articles, certificate, or instrument is contained in a decree or order of a court or judge having jurisdiction of a proceeding under the federal Bankruptcy Code.

(d) This Code section shall cease to apply to such corporation upon the entry of a final decree in the bankruptcy proceeding closing the case and discharging the trustee or trustees, if any; provided, however, that the closing of a case and discharge of trustee or trustees, if any, will not affect the validity of any act previously performed pursuant to subsection (a), (b), or (c) of this Code section.

(e) On filing any articles, certificate, report, or other paper made or executed pursuant to this Code section, there shall be paid to the Secretary of State for the use of the state the same fees as are payable by corporations not in bankruptcy upon the filing of like articles, certificates, agreements, reports, or other papers. (Code 1981, § 14-2-104, enacted by Ga. L. 2006, p. 825, § 1/SB 469.)

Effective date. — This Code section became effective July 1, 2006.

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

COMMENT

Note to 2006 Amendment

New Code Section 14-2-104, which is based on Section 303 of the General Corporation Law of the State of Delaware, confirms that a corporation in bankruptcy is authorized to effectuate the decrees and orders of the court or judge in such proceedings and to take any corporate action provided for or directed by such

decrees and orders without further action by directors or shareholders. Such authority may be exercised and such action may be taken, as may be directed in such orders or decrees, by any trustee appointed in the proceeding, by designated officers of the corporation, or by other representatives appointed by the court or judge. Where the action requires the filing of articles or a certificate with the Secretary of State, subsection (c) of new Code Section 14-2-104 specifically provides that the articles or certificate may certify that it was filed pursuant to the decree or order of a bankruptcy court. The validity of the action taken under Code Section 14-2-104 is not dependent on the existence or pendency of a confirmed plan of reorganization and the authority granted thereunder terminates upon the completion of such a bankruptcy proceeding.

Part 2

Filing Documents

14-2-120. Filing requirements.

(a) A document must satisfy the requirements of this Code section and of any other Code section that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(b) This chapter must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by this chapter. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary;

provided, however, that the person executing the document may do so as an attorney in fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the Secretary of State.

(g) The person executing the document shall sign it and state beneath or opposite his or her signature his or her name and the

capacity in which he or she signs; provided, however, that if the document is electronically transmitted, the electronic version of such person's name may be used in lieu of a signature. The document may but need not contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary; or

(3) An acknowledgment, verification, or proof.

(h) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one exact or conformed copy (except as provided in Code Sections 14-2-503 and 14-2-1509), the correct filing fee, any certificate required by Code Section 14-2-201.1, 14-2-1006.1, 14-2-1105.1, or 14-2-1403.1, and any penalty required by this chapter or other law.

(i) Notwithstanding the provisions of this chapter, the Secretary of State may authorize the filing of documents by electronic transmission, following the provisions of Chapter 12 of Title 10, the "Uniform Electronic Transactions Act," and the Secretary of State shall be authorized to promulgate such rules and regulations as are necessary to implement electronic filing procedures. (Code 1981, § 14-2-120, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 2; Ga. L. 1999, p. 405, § 1; Ga. L. 2009, p. 698, § 2/HB 126.)

The 2009 amendment, effective July 1, 2009, substituted "Uniform Electronic Transactions Act" for "Georgia Electronic Records and Signatures Act" in the middle of subsection (i).

14-2-122. Filing fees and penalties.

The Secretary of State shall collect the following fees and penalties when the documents described in this Code section are delivered to him or her for filing:

Document	Fee
(1) Articles of incorporation	$ 100.00
(2) Application for certificate of authority	225.00
(3) Annual registration	50.00
(4) Penalty for late filing of annual registration	25.00
(5) Agent's statement of resignation	No fee
(6) Certificate of judicial dissolution	No fee

Document	Fee
(7) Articles of dissolution or intent to dissolve	No fee
(8) Application of withdrawal	No fee
(9) Application for reservation of a corporate name	25.00
(10) Civil penalty for a foreign corporation transacting business in this state without a certificate of authority	500.00
(11) Statement of change of address of registered agent .... $5.00 per corporation but not less than	20.00
(12) Application for reinstatement	250.00
(13) Certificate of conversion	95.00
(14) Any other document required or permitted to be filed by this chapter	20.00

(Code 1981, § 14-2-122, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 3; Ga. L. 1997, p. 1165, § 1; Ga. L. 2002, p. 989, § 2; Ga. L. 2003, p. 883, § 1; Ga. L. 2007, p. 455, § 1/SB 234; Ga. L. 2008, p. 253, § 1/SB 436; Ga. L. 2010, p. 9, § 1-34/HB 1055; Ga. L. 2011, p. 430, § 1/SB 64.)

The 2007 amendment, effective July 1, 2007, added present paragraph (10) and redesignated former paragraph (10) as present paragraph (11).

The 2008 amendment, effective July 1, 2008, added present paragraphs (4), (7), and (8), redesignated former paragraphs (4) and (5) as present paragraphs (5) and (6), respectively, and redesignated former paragraphs (6) through (11) as present paragraphs (9) through (14), respectively.

The 2010 amendment, effective May 12, 2010, substituted "50.00" for "30.00" in paragraph (3).

The 2011 amendment, effective July 1, 2011, substituted "250.00" for "100.00" in paragraph (12).

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008).

For note, "Skimming from the 2%: The Status of Georgia's Restrictions on Shareholder Access to Corporate Information," 46 Ga. L. Rev. 835 (2012).

COMMENT

Note to 2007 Amendment

The 2007 amendment inserted new paragraph (10), which imposes a $95.00 fee for filing a certificate of conversion, and redesignated former paragraph (10) as paragraph (11).

PART 4

DEFINITIONS

14-2-140. Code definitions.

As used in this chapter, the term:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" or "conspicuously" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color or typing in capitals or underlined is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(5) "Deliver" includes delivery by hand, mail, private carrier, and electronic transmission.

(6) "Distribution" means a direct or indirect transfer of money or other property except its own shares or rights to acquire its own shares or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Effective date of notice" is defined in Code Section 14-2-141.

(8) "Electronic network" means any medium for sending, receiving, and viewing electronic transmissions among persons.

(9) "Electronic transmission" or "electronically transmitted" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Electronic transmissions include, but are not limited to, telegraphs, telegrams, cablegrams, teletypes, e-mail, and facsimile transmissions.

(10) "Employee" includes an officer but not a director. A director may accept duties that make him or her also an employee.

(11) "Entity" includes corporation and foreign corporation; nonprofit corporation and foreign nonprofit corporation; profit and nonprofit unincorporated association; business trust, estate, general partnership, limited partnership, trust, two or more persons having a joint or common economic interest; limited liability company and foreign limited liability company; limited liability partnership and foreign limited liability partnership; and state, United States, and foreign government.

(12) "First class" includes, when used with a reference to postage or mail, any class of postage or mail that is the equivalent of or better than first class under the then prevailing mail classifications.

(13) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(14) "Governmental subdivision" includes authority, county, district, and municipality.

(15) "Includes" denotes a partial definition.

(16) "Individual" includes the estate of an incompetent or deceased individual.

(17) "Mail" means the United States mail.

(18) "Means" denotes an exhaustive definition.

(19) "National securities exchange" means any securities exchange or securities quotation system if the securities listed on that exchange or system are exempt from the registration requirements of Chapter 5 of Title 10, known as the "Georgia Uniform Securities Act of 2008," pursuant to Code Section 10-5-10 or any successor provision.

(20) "Notice" is defined in Code Section 14-2-141.

(21) "Person" includes an individual and an entity.

(22) "Principal office" means the office in or out of this state so designated in the annual registration where the principal executive offices of a domestic or foreign corporation are located.

(23) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(24) "Record date" means the date established under Article 6 or 7 of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(25) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under subsection (c) of Code

Section 14-2-840 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(26) "Share exchange" means a plan of exchange of all of the outstanding shares of one or more classes or series of shares in accordance with Code Section 14-2-1102.

(27) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(28) "Shares" means the units into which the proprietary interests in a corporation are divided.

(29) "Sign" or "signature" includes any manual, facsimile, conformed, or electronic signature.

(30) "State," when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions and a territory and insular possession and their agencies and governmental subdivisions of the United States.

(31) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(32) "Treasury shares" means shares of a corporation which have been issued and which subsequently have been acquired by the corporation if the articles of incorporation of such corporation provide that shares so acquired become treasury shares. Treasury shares shall be deemed to be issued shares but not outstanding shares.

(33) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

(34) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group. (Code 1981, § 14-2-140, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 5; Ga. L. 1990, p. 257, § 1; Ga. L. 1993, p. 1231, § 1; Ga. L. 1995, p. 482, § 1; Ga. L. 1996, p. 1203, § 2; Ga. L. 1999, p. 405, § 3; Ga. L. 2004, p. 508, § 1; Ga. L. 2005, p. 60, § 14/HB 95; Ga. L. 2008, p. 381, § 7/SB 358.)

The 2004 amendment, effective July 1, 2004, inserted "or 'conspicuously'" in paragraph (3); substituted "delivery by hand, mail, private carrier, and electronic transmission" for "mail" in paragraph (5); deleted the parentheses in the first sentence of paragraph (6); redesignated former paragraph (7.1) as present paragraph

(8); substituted the present provisions of paragraph (8) for the former provisions of paragraph (7.1) which read: "'Electronic transmission' or 'electronically transmitted' means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient."; added paragraph (9); redesignated former paragraphs (8) and (9) as present paragraphs (10) and (11), respectively; added paragraph (12); redesignated former paragraphs (10) through (25) as present paragraphs (13) through (28), respectively; inserted "an" twice in present paragraph (21); deleted the parentheses in present paragraph (22); added paragraph (29); redesignated former paragraphs (26) through (30) as present paragraphs (30) through (34), respectively; deleted the parentheses throughout present paragraph (30); and deleted the comma following "shares" in the last sentence of present paragraph (32).

The 2005 amendment, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, redesignated former paragraphs (8), (9), (26), (27), and (28) as present paragraphs (9), (8), (28), (26), and (27), respectively; and revised punctuation in paragraphs (8) and (12).

The 2008 amendment, effective July 1, 2009, substituted "'Georgia Uniform Securities Act of 2008,' pursuant to Code Section 10-5-10" for "'Georgia Securities Act of 1973,' pursuant to paragraph (8) or (8.1) of Code Section 10-5-8" in paragraph (19).

COMMENT

Note to 2004 Amendment

Current Georgia law provides that certain types of mailings to shareholders are to be mailed by "first class." Transfer agents often use a class of mail which is the equivalent of or better than first class but under different postal service classifications. The amendment of Code Section 14-2-140 to incorporate a definition of "First Class" clarifies that mailings with similar classifications are effective as such.

The 2004 Amendments further revise the definitions of "Deliver", "Electronic Transmission", and "Sign" or "Signature", to provide additional specificity with regard to the modes of permissible paperless communication. The 2004 Amendments further include a definition of "Electronic network", which is used in Code Section 14-2-720 in the context of the inspection of a shareholders' list.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Cited in Resourcing Servs. Atlanta, LLC v. Ga. Dep't of Revenue, 288 Ga. App. 532, 654 S.E.2d 649 (2007); Akridge v. Silva, 298 Ga. App. 862, 681 S.E.2d 667 (2009).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 7B Am. Jur. Pleading and Practice Forms, Corporations, §§ 2, 247.

14-2-141. Notice.

(a) Notice under this chapter shall be in writing unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, electronic transmission, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication. Unless otherwise provided in the articles of incorporation, bylaws, or this chapter, notice by electronic transmission shall be deemed to be notice in writing for purposes of this chapter.

(c) Written notice by a domestic or foreign corporation to its shareholders, if in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders. If at the record date fixed to determine the shareholders entitled to receive a notice the corporation has a class or series of shares listed on a national securities exchange or has more than 500 shareholders of record, it may utilize a class of mail other than first class; provided, however, that if the notice is of a meeting of shareholders, the notice is mailed, with adequate postage prepaid, not less than 30 days before the date of the meeting.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual registration or, in the case of a foreign corporation that has not yet delivered an annual registration, in its application for a certificate of authority.

(e) Except as provided in subsection (c) of this Code section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received, or when delivered, properly addressed, to the addressee's last known principal place of business or residence;

(2) Five days after its deposit in the mail, as evidenced by the postmark, or such longer period as shall be provided in the articles of incorporation or bylaws, if mailed with first-class postage prepaid and correctly addressed; or

(3) On the date shown on the return receipt, if sent by registered or certified mail or statutory overnight delivery, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) In calculating time periods for notice under this chapter, when a period of time measured in days, weeks, months, years, or other measurement of time is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted.

(h) Without limiting the manner by which notice otherwise may be given effectively under this chapter:

(1) Any notice by a corporation under any provision of this chapter, the articles of incorporation, or the bylaws to record or beneficial holders of its shares shall be effective if given by a single written notice to two or more such holders who share an address if consented to by those holders. Any such consent shall be revocable by a holder by written notice to the corporation. Except as provided in paragraph (2) of this subsection, any such consent shall be in writing and signed by each record or beneficial holder with respect to which such single written notice is to be effective.

(2) Any record or beneficial holder of shares of any class or series which are either listed on a national securities exchange or held of record by more than 500 shareholders who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice permitted under paragraph (1) of this subsection to such holders, shall be deemed to have consented to receiving such single written notice.

(i) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this Code section or other provisions of this chapter, those requirements govern.

(j)(1) Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation under any provision of this chapter, the articles of incorporation, or the bylaws shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given. Any such consent shall be revocable by the shareholder by written notice to the corporation. Any such consent shall be deemed revoked if:

(A) The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and

(B) Such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other

person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(2) Notice given pursuant to paragraph (1) of this subsection shall be deemed effective:

(A) If by facsimile telecommunication, when transmitted to a telephone number at which the shareholder has consented to receive notice;

(B) If by e-mail, when transmitted to an e-mail address at which the shareholder has consented to receive notice;

(C) If by a posting on an electronic network together with separate notice to the shareholder of such specific posting, upon the later of (i) such posting or (ii) the giving of such separate notice; or

(D) If by any other form of electronic transmission, when transmitted to the shareholder.

(k) An affidavit, certificate, or other written confirmation of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given under this Code section shall, in the absence of fraud, be prima-facie evidence of the facts stated therein.

(l) The corporation may be obligated to accept from a shareholder consents, requests, demands, or notices given and delivered under this chapter to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the books in which proceedings of meetings of shareholders are recorded by electronic transmission only as provided by resolution of the board of directors of the corporation or in the articles of incorporation.

(m) Unless the registered agent of the corporation provides written consent to the corporation to the receipt of a shareholder's consent, request, demand, or notice by electronic transmission under this chapter, delivery made to a corporation's registered office shall be made by hand or by certified or registered mail or statutory overnight delivery, return receipt requested. (Code 1981, § 14-2-141, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 6; Ga. L. 1997, p. 1165, § 1.1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 897, § 1; Ga. L. 2004, p. 508, § 2.)

The 2004 amendment, effective July 1, 2004, in subsection (b), substituted "electronic transmission" for "telegraph, teletype, facsimile" in the first sentence and substituted "electronic transmission" for "facsimile transmission, telegraph, or teletype" in the last sentence; in the last sentence of subsection (c), inserted "at the record date fixed to determine the shareholders entitled to receive a notice", inserted "a class or series of shares listed on a national securities exchange or has",

deleted "entitled to vote at a meeting" following "record", inserted "; provided, however, that", and substituted "is of a meeting of shareholders, the notice" for "of the meeting"; and added subsections (j) through (m).

COMMENT

Note to 2004 Amendment

New subsection (f) to Code Section 14-2-705 provides an exception to the shareholder notice requirement when multiple notices of annual meeting or dividend payments have been returned as undeliverable. This provision is modeled on Section 230(b) of the General Corporation Law of the State of Delaware and conforms in large part to the shareholder notice provisions of Securities and Exchange Commission Rule 14(a)-3(e)(2) promulgated under the Securities Exchange Act of 1934, as amended. The exception to the shareholder notice requirements does not apply to any notice of an annual meeting returned as undeliverable if the notice was given by electronic transmission.

The 2004 amendments also permit notices in this Chapter to be given to the corporation by electronic transmission if provided by resolution of the board of directors or in the articles of incorporation, and further permit notices in this Chapter to be given to a shareholder and to a registered agent of a corporation by electronic transmission only if the shareholder or registered agent, respectively, shall consent in advance.

Part 5

Execution of Documents

14-2-151. Secretary or assistant secretary of corporation to authenticate records of corporation; reliance on affixed seal by third party.

JUDICIAL DECISIONS

Corporate seal not requirement for valid corporate assignment of deed. — Unlike the current version of O.C.G.A. § 14-5-7, the prior version (effective until June 30, 2011) lacked explicit language that a corporate seal was not required for a conclusively valid corporate conveyance; yet, the applicable Georgia law still revealed that a corporate seal was not a requirement for a valid corporate assignment of deed. Foster v. Homeward Residential Inc. (In re Foster), 500 B.R. 197 (Bankr. N.D. Ga. 2013).

ARTICLE 2

INCORPORATION

14-2-204. Liability for preincorporation transactions.

JUDICIAL DECISIONS

Partnership agreement for LLC that was never formed. — Mortgage corporation was not bound by a partnership agreement executed by the mortgage corporation's sole officers and shareholders as partners of a limited liability company (LLC); as the LLC was never formed, the officers became personally obligated

under the partnership agreement. Nationwide Mortg. Servs. v. Troy Langley Constr., Co., 280 Ga. App. 539, 634 S.E.2d 502 (2006).

14-2-205. Organization of corporation.

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(A) To elect directors and complete the organization of the corporation; or

(B) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more consents in writing or by electronic transmission describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state. (Code 1981, § 14-2-205, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 3.)

The 2004 amendment, effective July 1, 2004, substituted "consents in writing or by electronic transmission" for "written consents" near the end of subsection (b).

COMMENT

Note to 2004 Amendment

The 2004 amendments permit actions of incorporators required or permitted by this Chapter to be taken without a meeting by electronic transmission.

ARTICLE 3

PURPOSES AND POWERS

14-2-305. Submission of certain matters to shareholder vote.

Subject to the requirements set forth in paragraph (1) of subsection (b) of Code Section 14-2-1003, with respect to the submission of amendments to the articles of incorporation to shareholders; paragraph (1) of subsection (b) of Code Section 14-2-1103, with respect to the

submission of a plan of merger or share exchange to shareholders; paragraph (1) of subsection (b) of Code Section 14-2-1202, with respect to the submission of a disposition of assets requiring shareholder approval to shareholders; and paragraph (1) of subsection (b) of Code Section 14-2-1402, with respect to the submission of a proposed dissolution to shareholders, a corporation may agree to submit a matter to a vote of its shareholders regardless of whether the board of directors determines at any time subsequent to adopting or approving such matter that such matter is no longer advisable and recommends that the shareholders reject or vote against the matter. (Code 1981, § 14-2-305, enacted by Ga. L. 2006, p. 825, § 2/SB 469.)

Effective date. — This Code section became effective July 1, 2006.

COMMENT

Note to 2006 Amendment

The Code requires that certain matters, such as certain amendments to the articles of incorporation, certain mergers, dispositions of all or substantially all assets and dissolution, be submitted to shareholders for approval. In addition, stock exchange listing requirements mandate that certain matters be submitted for shareholder approval in the absence of a state law requirement, and shareholder approval may be necessary to secure certain benefits that are available under securities and tax laws or regulations. The addition of new Code Section 14-2-305, which is based on Section 146 of the General Corporate Law of the Sate of Delaware, coupled with the amendments to subsections (b)(1) of Code Sections 14-2-1003, 14-2-1103, 14-2-1202 and 14-2-1402, clarify that directors may authorize the corporation to agree with another person to submit a matter to shareholders, but reserve the ability to change their recommendation.

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

ARTICLE 4

NAME

14-2-401. Corporate name.

(a) A corporate name:

(1) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language;

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by Code Section 14-2-301 and its articles of incorporation;

(3) May not contain anything which, in the reasonable judgment of the Secretary of State, is obscene; and

(4) Shall not in any instance exceed 80 characters, including spaces and punctuation.

(b) Except as authorized by subsections (c) and (d) of this Code section, a corporate name must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved under Code Section 14-2-402;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(4) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state;

(5) The name of a limited partnership or professional association filed with the Secretary of State; and

(6) The name of a limited liability company formed or authorized to transact business in this state.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (b) of this Code section. The Secretary of State shall authorize use of the name applied for if the other corporation consents to the use in writing and files with the Secretary of State articles of amendment to its articles of incorporation changing its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and:

(1) The proposed user corporation has merged with the other corporation;

(2) The proposed user corporation has been formed by reorganization of the other corporation; or

(3) The other domestic or foreign corporation has taken the steps required by this chapter to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the foreign corporation applying to use its former name.

(e) This chapter does not control the use of fictitious or trade names. Issuance of a name under this chapter means that the name is

distinguishable for filing purposes on the records of the Secretary of State pursuant to subsection (b) of this Code section. Issuance of a corporate name does not affect the commercial availability of the name. (Code 1981, § 14-2-401, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 12; Ga. L. 1995, p. 482, § 2; Ga. L. 2006, p. 825, § 3/SB 469.)

The 2006 amendment, effective July 1, 2006, in paragraph (b)(2), deleted "or registered" following "reserved" and deleted "or 14-2-403" following "Code Section 14-2-402".

COMMENT

Note to 2006 Amendment

Subsection (b)(2) of Code Section 14-2-401 was amended for purposes of deleting references to "or registered" and "or 14-2-403." Code Section 14-2-403, which was repealed in 2002, provided a means by which a foreign corporation, not qualified to transact business in Georgia, could preserve the right to use its unique real name if it subsequently elected to qualify in Georgia.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 18A Am. Jur. Pleading and Practice Forms, Name, § 45.

ARTICLE 5

OFFICE AND AGENT

PART 1

REGISTERED AGENTS AND SERVICE OF PROCESS

14-2-501. Registered office and registered agent.

JUDICIAL DECISIONS

Obligation to determine where venue existed. — Where venue did not lie in the county where an individual filed a negligence action and a corporation's registered agent was not located in the same county as the corporation's principal office, the trial court could not simply deny the corporation's and its insurer's Ga. Unif. Super. Ct. R. 19.1(B) motion to transfer; it was obligated by O.C.G.A. §§ 14-2-501, 14-2-510(b), and 14-2-1622(a)(2) to determine the county or counties in which venue properly lay. Coastal Transp., Inc. v. Tillery, 270 Ga. App. 135, 605 S.E.2d 865 (2004).

Service of process held sufficient. — Because a corporation failed in its burden of showing that the person who actually received service of process was not authorized to accept service on behalf of its registered agent, the service was properly found to be sufficient. Thus, the trial court was not required to dismiss the action based on a lack of sufficient service of process. Holmes & Co. v. Carlisle, 289 Ga. App. 619, 658 S.E.2d 185 (2008).

Service of process upon registered agent of corporation. — In five consolidated aviation wrongful death cases and one aviation property case, the trial court

properly denied the motion to dismiss filed by an out-of-state damper part seller on the ground of insufficient service of process as personal service upon the seller's registered agent was appropriate under both its State of Delaware and under Georgia law. Vibratech, Inc. v. Frost, 291 Ga. App. 133, 661 S.E.2d 185 (2008).

14-2-504. Service on corporation.

Law reviews. — For survey article on trial practice and procedure, see 59 Mercer L. Rev. 423 (2007).

JUDICIAL DECISIONS

Analysis

General Consideration

Cited in Munoz v. Pac. Ins. Co., 261 Ga. App. 246, 582 S.E.2d 207 (2003).

Service Upon Registered Agent

Service of process held sufficient. — Because a corporation failed in its burden of showing that the person who actually received service of process was not authorized to accept service on behalf of its registered agent, the service was properly found to be sufficient. Thus, the trial court was not required to dismiss the action based on a lack of sufficient service of process. Holmes & Co. v. Carlisle, 289 Ga. App. 619, 658 S.E.2d 185 (2008).

Reasonable Diligence

Reasonable diligence established. — Because the plaintiff presented sufficient evidence that, after filing its complaint, it provided the sheriff's office with the defendant's correct address, and a few weeks later, contacted the sheriff's office to inquire whether service had been completed upon the defendant and learned that repeated service attempts were unsuccessful, evidence of reasonable diligence supporting the denial of a motion to set aside a default judgment was found; moreover, unlike O.C.G.A. § 9-11-4(e)(1), service via overnight delivery was supported and did not violate the defendant's due process rights. B&B Quick Lube, Inc. v. G&K Servs. Co., 283 Ga. App. 299, 641 S.E.2d 198 (2007).

Duty of registered agent. — Under O.C.G.A. § 14-2-504, a registered agent must receive service of process on behalf of the company, but the statute does not require an agent to perform any particular acts in receiving service of process. Because Georgia law is silent on the duty that a registered agent owes to an LLC, a registered agent simply owes a duty of reasonable care in receiving service of process. Azalea House LLC v. Nat'l Registered Agents, Inc., No. 10-14134, 2011 U.S. App. LEXIS 3773 (11th Cir. Feb. 25, 2011) (Unpublished).

Foreign Corporations

Service on foreign corporations in wrongful death actions. — In five consolidated aviation wrongful death cases and one aviation property case, the trial court properly denied the motion to dismiss filed by an out-of-state damper part seller on the ground of insufficient service of process as personal service upon the seller's registered agent was appropriate under both the seller's state of Delaware and Georgia law. Vibratech, Inc. v. Frost, 291 Ga. App. 133, 661 S.E.2d 185 (2008).

PART 2

VENUE

14-2-510. Venue.

Law reviews. — For annual review of Georgia Corporation and Business Organization Law, see 15 (No. 7) Ga. St. B.J. 20 (2010).

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Obligation to determine where venue existed. — Because venue did not lie in the county where an individual filed a negligence action and a corporation's registered agent was not located in the same county as the corporation's principal office, the trial court could not simply deny the corporation's and its insurer's Ga. Unif. Super. Ct. R. 19.1(B) motion to transfer; it was obligated by O.C.G.A. §§ 14-2-501, 14-2-510(b), and 14-2-1622(a)(2) to determine the county or counties in which venue properly lay. Coastal Transp., Inc. v. Tillery, 270 Ga. App. 135, 605 S.E.2d 865 (2004).

Cited in M&M Mortg. Co. v. Grantville Mill, LLC, 302 Ga. App. 46, 690 S.E.2d 630 (2010); Mauer v. Parker Fibernet, LLC, 306 Ga. App. 160, 701 S.E.2d 599 (2010); WMW, Inc. v. Am. Honda Motor Co., 291 Ga. 683, 733 S.E.2d 269 (2012).

Office

Office and transacting business.

Trial court's order that venue was proper in Twiggs County was proper in a declaratory judgment action between an owner and a corporation arising from leases between the parties for facilities because one of the facilities at issue was located in Twiggs County and the corporation's subsidiary, a co-defendant, had an office and transacted business in Twiggs County. Mariner Healthcare, Inc. v. Foster, 280 Ga. App. 406, 634 S.E.2d 162 (2006).

Registered Office

Corporation generally sued in county of registered office.

When an out-of-state seller sued an in-state buyer in Georgia, despite a provision in the parties' contract for the jurisdiction of the courts of Texas, and the seller did not respond, venue was proper in the courts of Georgia under O.C.G.A. § 14-2-510(b)(1) because the buyer was incorporated in Georgia and was served with process at its registered agent's office in Georgia, and because the parties waived the forum selection clause by either filing suit in Georgia or not responding. Euler-Siac S.P.A. (Creamar Spa) v. Drama Marble Co., 274 Ga. App. 252, 617 S.E.2d 203 (2005).

Tort Actions

Venue of a civil action for libel, etc.

Teenager's motion to remand was properly denied as: (1) a police officer was the only defendant who resided in Toombs County; (2) venue in Toombs County "vanished" when the officer was granted summary judgment, so the teenager could not rely on the joint tortfeasor venue provision of the Georgia Constitution; (3) the newspaper defendants did not have an office in Toombs County so as to preclude venue there pursuant to O.C.G.A. § 14-2-510(b)(3); (4) although the newspaper defendants transacted business in Toombs County, they did not maintain an office there; and (5) venue was not prop-

erly based on O.C.G.A. § 14-11-1108(b), even though some defendants were limited liability companies. Torrance v. Morris Publ'g Group, LLC, 281 Ga. App. 563, 636 S.E.2d 740 (2006), cert. denied, 2007 Ga. LEXIS 160 (Ga. 2007).

Employer having office in county at time of filing suit by employee. — In a tort action, venue over an employer was assessed based upon the facts existing at the time the action was originally filed because the employer was added as a party to a lawsuit under the relation back provision of O.C.G.A. § 9-11-15(c). Thus, venue under O.C.G.A. § 14-2-510 was proper based on the employer's having had an office and transacted business in the county at the time the suit was originally filed. HD Supply, Inc. v. Garger, 299 Ga. App. 751, 683 S.E.2d 671 (2009).

ARTICLE 6

SHARES AND DISTRIBUTIONS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Proof of a "Security" under Federal and State Statutes, 22 POF3d 485.

Legal Malpractice in a Securities Offering, 22 POF3d 559.

Use of Statistical Evidence in Proving Churning of Securities Accounts, 27 POF3d 213.

Liability of Shareholder for Wrongfully Transferring Or Assigning Corporate Common Stock Shares To Third Party, 47 POF3d 139.

Part 1

Shares

14-2-601. Authorized shares.

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

14-2-602. Terms of class or series determined by board of directors.

(a) If the articles of incorporation so provide, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights of (1) any class of shares before the issuance of any shares of that class or (2) one or more series within a class, and designate the number of shares within that series, before the issuance of any shares of that series.

(b) Each series of a class must be given a distinguishing designation.

(c) Except to the extent otherwise permitted by Code Section 14-2-624, all shares of a class or, if applicable, series within a class must have preferences, limitations, and relative rights identical with those of other shares of the same class or series and, except to the extent otherwise provided in the description of the series, all shares of a series must have preferences, limitations, and relative rights identical with

those of other series of the same class; provided, however, that any of the voting powers, preferences, designations, rights, qualifications, limitations, or restrictions of or on the class or series of shares, or the holders thereof, may be made dependent upon facts ascertainable outside the articles of incorporation if the manner in which the facts shall operate upon the voting powers, designations, preferences, rights, qualifications, limitations, or restrictions of or on the shares, or the holders thereof, is clearly and expressly set forth in the articles of incorporation. As used in this Code section, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(d) Before issuing any shares of a class or series created under this Code section, the corporation must deliver to the Secretary of State for filing articles of amendment, which are effective without shareholder action, that set forth:

(1) The name of the corporation;

(2) The text of the amendment determining the terms of the class or series of shares;

(3) The date it was adopted; and

(4) A statement that the amendment was duly adopted by the board of directors.

(e) Unless otherwise provided in the articles of incorporation, if a board of directors has established a series in accordance with the terms of this Code section, the board of directors may at any time and from time to time amend the preferences, limitations, and relative rights of the series before any shares of the series have been issued; increase or decrease the number of shares contained in the series, but not below the number of shares then issued; or eliminate the series where no shares are issued. In each case the board shall do so by filing articles of amendment, which are effective without shareholder action, in the manner provided in subsection (d) of this Code section. In case the number of shares contained in a series shall be decreased or a series of shares shall be eliminated, the shares that are the subject of the decrease or that compose the series being eliminated shall resume the status that they had prior to the adoption of the articles of amendment that first established such series unless otherwise provided in the articles of incorporation or unless the board of directors causes such shares to become treasury shares.

(f) Nothing contained in this Code section shall be deemed to limit the board of directors' authority or discretion to determine the terms and conditions of rights, options, or warrants issuable pursuant to Code Section 14-2-624. (Code 1981, § 14-2-602, enacted by Ga. L. 1988, p.

1070, § 1; Ga. L. 1989, p. 946, § 15; Ga. L. 2000, p. 1567, § 2; Ga. L. 2003, p. 897, § 3; Ga. L. 2004, p. 508, § 4; Ga. L. 2005, p. 60, § 14/HB 95.)

The 2004 amendment, effective July 1, 2004, in subsection (e), in the first sentence, substituted "Unless otherwise provided in the articles of incorporation if a" for "After the" at the beginning, inserted "may", substituted "amend the preferences, limitations, and relative rights of the series before any shares of the series have been issued;" for "may", substituted a semicolon for a comma following "issued", and inserted "; in each case the board shall do so", and added the last sentence.

The 2005 amendment, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (e).

Editor's notes. — Ga. L. 2005, p. 60, § 14, purported to amend this Code section but actually amended subsection (e) of this Code section.

COMMENT

Note to 2004 Amendment

The amendment to Code Section 14-2-602(e) is based on Section 151(g) of the Delaware General Corporation Act. Barring a restriction in the articles of incorporation, including one imposed by the articles of amendment pursuant to which the series in questions was created, the amendment would restore the shares of a series the terms of which have been designated under the authority of subsection (a) but none of which are outstanding, either because shares of the series were never issued or were issued but have since been redeemed, to the undesignated class they occupied prior to the action of the board of directors that created the series. Such shares may then be retained for future designation by the board of directors under the original "blank check" authority granted in the articles of incorporation. This flexibility is consistent with that created by the 2002 amendments to Model Act Section 6.02, which permit a board of directors to both "classify" and "reclassify" unissued shares of the corporation.

The amendment to subsection (e) also makes clear that, in the case of a series that has been designated by an amendment to the articles of incorporation filed in accordance with subsection (d) but as to which no shares have ever been issued, the board may amend the terms of the series by filing a subsequent amendment, rather than having to file both an amendment eliminating the first series and a second amendment designating a new series.

Part 2

Issuance of Shares

14-2-621. Issuance of shares.

JUDICIAL DECISIONS

Failure to value property at time of transfer.

Trial court properly found that the issuance of the controlling shares in a corporation to its president breached the president's fiduciary duties to the shareholders because the president made no attempt to determine the value of the shares and was interested in control of the corporation, not the well-being of the shareholders; as the president failed to make any real determination that the consideration for the shares was adequate, he breached his fiduciary duties to

the existing shareholders. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

Issuance of controlling shares of stock in close corporation to president breached the president's fiduciary duties to the corporation's shareholders as prior to the issuance of the shares, there was no attempt to determine their value and as the president was interested in his control of the corporation, not the well-being of the shareholders; as the president failed to make any real determination that the consideration for the issued shares was adequate, the president breached his fiduciary duties to the existing shareholders. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

Shares not validly issued when no board approval. — As shares of stock issued to a brother in a small, family-owned corporation were not approved by the board of directors, as required by the corporate bylaws, the shares were not validly issued; accordingly, there was no cause to consider whether the issuance of the disputed stock certificates was supported by adequate consideration. Furthermore, the evidence did not support the brother's assertion that the corporation's settled course of business was to acquiesce in such issuance by the corporate president as the shares were not deemed to have been validly issued. Ward v. Ward, 322 Ga. App. 888, 747 S.E.2d 95 (2013).

14-2-622. Liability of shareholders.

JUDICIAL DECISIONS

Personal liability of a shareholder for individual actions. — Trial court erred in granting a directed verdict pursuant to O.C.G.A. § 9-11-50 to a pediatrician in a medical malpractice action by the parents of a minor, whose allegedly misdiagnosed bacterial meningitis caused brain damage and rendered the minor a quadriplegic, because there was some evidence that the pediatrician violated the standard of care when the pediatrician allowed the doctor's unlicensed nurse to handle weekend calls from patients' families without the necessity of contacting the pediatrician; although the nurse, who spoke with the parents and gave them erroneous information that the child probably had a virus or was hungry, was employed by the pediatrician's professional corporation, the pediatrician could not be shielded from individual liability from the pediatrician's own acts, pursuant to O.C.G.A. § 14-2-622(b). Snider v. Basilio, 276 Ga. App. 315, 623 S.E.2d 521 (2005).

14-2-624. Share options.

(a) A corporation may issue rights, options, or warrants with respect to the shares of the corporation whether or not in connection with the issuance and sale of any of its shares or other securities. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, the consideration for which they are to be issued, and the terms and conditions relating to their exercise, including the time or times, the conditions precedent, and the prices at which and the holders by whom the rights, options, or warrants may be exercised.

(b) If at the time the corporation issues rights, the corporation does not have authorized and unissued shares sufficient to satisfy the rights if and when exercised, the granting of the rights is not invalid solely by

reason of the lack of sufficient authorized but unissued shares to honor the exercise of the rights.

(c) The terms of the rights, options, or warrants, including the time or times, the conditions precedent, and the prices at which and the holders by whom the rights, options, or warrants may be exercised, as well as their duration, (1) may preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants or invalidate or void any rights, options, or warrants and (2) may be made dependent upon facts ascertainable outside the documents evidencing the rights, or the resolution providing for the issue of the rights, options, or warrants adopted by the board of directors, if the manner in which the facts shall operate upon the exercise of rights is clearly and expressly set forth in the document evidencing the rights or in the resolution. Such terms and conditions need not be set forth in the articles of incorporation. As used in this Code section, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(d) The terms and conditions of rights, options, or warrants issuable pursuant to this Code section may include provisions that:

(1) Preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants by, or invalidate or void any such rights, options, or warrants held by, any person that is a beneficial owner of a specified amount of the outstanding equity securities or percentage of the outstanding voting power of the corporation, or by any transferee of such person, except that such provisions shall not affect any person whose beneficial ownership at the date of adoption of any such provision exceeds such specified amount or percentage, unless the amount of outstanding equity securities beneficially owned by such person is subsequently increased; and

(2) Limit, restrict, or condition the power of a future director to vote for the redemption, modification, or termination of the rights, options, or warrants for a period not to exceed 180 days from the initial election of the director, provided that such 180 day time limitation shall not apply to any such limitation, restriction, or condition that is based solely on a director's current or former status as an employee or officer of the corporation; as a director, officer, employee, affiliate, or associate of any interested shareholder or person seeking to become an interested shareholder; or as a director, officer, or employee of an affiliate of an interested shareholder or person seeking to become an interested shareholder.

(e) The provisions of subsection (d) of this Code section shall be applied as follows:

(1) The definition of "beneficial owner" contained in Code Section 14-2-1110 shall be applicable to this Code section, except (A) any

exclusion from such definition shall be permitted, and (B) that the effective date of this paragraph shall be December 31, 2000, insofar as it may be deemed to apply to any right, option, or warrant issued or issuable at the date of enactment of this paragraph;

(2) The definition of "affiliate," "associate," and "interested shareholder" contained in Code Section 14-2-1110 shall be applicable to this Code section; provided, however, that the inclusion of a person as a nominee for election as a director of the corporation by an interested shareholder or person seeking to become an interested shareholder shall not create an implication that such nominee is an affiliate of an interested shareholder or person seeking to become an interested shareholder; and

(3) Any rights, options, or warrants issued or issuable pursuant to this Code section that contain a provision otherwise permitted by paragraph (2) of subsection (d) of this Code section but which do not purport to comply with the 180 day time limitation specified therein shall not be rendered invalid, but any such provision shall be deemed to be effective only to the extent permitted by paragraph (2) of subsection (d) of this Code section.

(f) The board of directors may, by a resolution adopted by the board, authorize one or more officers of the corporation to do one or both of the following:

(1) Designate officers and employees of the corporation or of any of its subsidiaries to be recipients of rights, options, or warrants to be issued by the corporation; or

(2) Determine the number of rights, options, or warrants to be received by such officers and employees;

provided, however, that the resolution authorizing such officer or officers shall specify the total number of rights, options, or warrants such authorized officer or officers may award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any rights, options, or warrants. (Code 1981, § 14-2-624, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 16; Ga. L. 2000, p. 1567, § 3; Ga. L. 2001, p. 4, § 14; Ga. L. 2003, p. 897, § 4; Ga. L. 2004, p. 508, § 5.)

The 2004 amendment, effective July 1, 2004, added subsection (f).

COMMENT

Note to 2004 Amendment

New subsection (f) to Code Section 14-2-624 clarifies Georgia law that a board of directors may delegate to an officer the authority to specify the officers and employees of the corporation or its subsidiaries who will receive options and to

determine the number of options to be received by each such officer or employee so long as the board has specified the total number of options to be awarded. The statute also makes clear that the person delegated with the authority to choose new optionholders cannot choose himself or herself. This provision is modeled on Section 157(c) of the General Corporation Law of the State of Delaware.

14-2-627. Restriction on transfer of shares and other securities.

Law reviews. — For article, "2013 Georgia Corporation and Business Organization Case Law Developments," see 19 Ga. St. B.J. 28 (April 2014).

JUDICIAL DECISIONS

Restriction invalid. — Provision in a family corporation's articles of incorporation which prohibited a Chapter 7 debtor from selling stock the debtor owned in the corporation for a period of ten years was invalid and unenforceable under O.C.G.A. § 14-2-627 because the provision did not fall into any of the four categories of permissible restrictions that were recognized under § 14-2-627(d), and the court ordered the corporation to reissue shares the debtor owned in the corporation in the bank's name to partially satisfy a debt the debtor owed to the bank. AB&T Nat'l Bank v. Mossy Dell, Inc. (In re Beauchamp), 483 B.R. 268 (Bankr. M.D. Ga. 2012), overruled on other grounds, 500 B.R. 235 (Bankr. M.D. Ga. 2013).

Bankruptcy court did not err when the court found that restrictions a family-owned corporation placed on the transfer of the corporation's stock, which limited transfer to the lineal descendants of a husband and wife who founded another corporation and prohibited shareholders from transferring their shares for ten years, was invalid under O.C.G.A. § 14-2-627 to the extent it prohibited shareholders from transferring their shares for ten years; however, nothing in the statute supported the court's determination that the provision which allowed transfer only to family members was manifestly unreasonable because it did not provide an alternative means for shareholders to realize the value of their shares. Mossy Dell, Inc. v. AB&T Nat'l Bank (In re Beauchamp), 500 B.R. 235 (M.D. Ga. 2013).

Part 3

Subsequent Acquisition of Shares by Shareholders and Corporation

14-2-630. Shareholders' preemptive rights.

(a) The shareholders of all corporations, other than those described in subsection (b) of this Code section, do not have a preemptive right to acquire the corporation's unissued or treasury shares, if any, except to the extent the articles of incorporation so provide.

(b) The shareholders of the following corporations shall have preemptive rights as provided in subsection (c) of this Code section, unless the articles of incorporation expressly provide otherwise:

(1) Corporations electing statutory close corporation status; and

(2) Corporations in existence on July 1, 1989, whose:

(A) Shareholders had such rights as of that date; or

(B) Articles of incorporation have been restated or amended on or after July 1, 1989, with notice to the shareholders that such restatement or amendment would cause the shareholders of the corporation to have preemptive rights.

(c) A statement included in the articles of incorporation that the corporation elects to have preemptive rights (or words of similar import) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued or treasury shares upon the decision of the board of directors to issue them;

(2) There is no preemptive right with respect to the issuance of:

(A) Shares issued as a share dividend;

(B) Fractional shares;

(C) Shares issued to effect a merger or share exchange;

(D) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates upon terms and conditions approved or ratified by the affirmative vote of the holders of a majority of the shares entitled to vote thereon;

(E) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates upon terms and conditions approved or ratified by the affirmative vote of the holders of a majority of the shares entitled to vote thereon;

(F) Shares authorized in articles of incorporation that are issued within one year from the effective date of incorporation;

(G) Shares issued under a plan of reorganization approved in a proceeding under any applicable act of Congress relating to the reorganization of corporations;

(H) Shares sold otherwise than for money, deemed by the board of directors in good faith to be advantageous to the corporation's business, other than shares sold pursuant to subparagraph (A) or (B) of this paragraph; or

(I) Shares released by waiver from their preemptive right by the affirmative vote or consent in writing or by electronic transmission of the holders of two-thirds of the shares of the class to be issued. Any vote or consent shall be binding on all shareholders and their

transferees for the time specified in the vote or consent up to but not exceeding one year from the date thereof and shall protect the corporation, its management, and all persons who may within that time acquire the shares so released;

(3) A shareholder may waive his or her individual preemptive right at any time, and the holders of a class of shares may waive the preemptive rights of the class by the affirmative vote or consent in writing or by electronic transmission of the holders of two-thirds of the shares of the class with preemptive rights. The waiver of preemptive rights with respect to past issuances of shares shall be effective if made by the person who was the shareholder at the time the shares were issued. A waiver evidenced by a writing or by electronic transmission is irrevocable even though it is not supported by consideration;

(4) Holders of shares of any class without general voting rights or with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class;

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights; and

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights.

(d) For purposes of this Code section, the term "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(e) Shares that are otherwise validly issued and outstanding shall not be affected by reason of any violation of preemptive rights with respect to their issuance.

(f) No action shall be maintained to enforce any liability for violation of preemptive rights unless brought within three years of the discovery or notice of the violation, but in no event shall any action be brought to enforce a liability for violation of preemptive rights more than five years after the issuance giving rise to the violation. (Code 1981, § 14-2-630, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 19; Ga. L. 1993, p. 1231, § 5; Ga. L. 2004, p. 508, § 6.)

The 2004 amendment, effective July 1, 2004, substituted "consent in writing or by electronic transmission" for "written consent" in subparagraph (c)(2)(I); and, in

paragraph (c)(3), in the first sentence, inserted "or her"and substituted "consent in writing or by electronic transmission" for "written consent", and inserted "or by electronic transmission" in the last sentence.

COMMENT

Note to 2004 Amendment

The 2004 amendments permit shareholders to waive their preemptive rights by electronic transmission.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 7B Am. Jur. Pleading and Practice Forms, Corporations, § 354.

PART 4

DISTRIBUTIONS

14-2-641. Effect of failure to present securities for redemption, surrender, cancellation, or payment.

(a) As used in this Code section, the term:

(1) "Call" means a notice or demand, pursuant to a right contained in the articles of incorporation, resolution of the board of directors, or other document governing rights and preferences of shares or other securities, to redeem, cancel, or otherwise extinguish a part or all of a class or series of securities of an issuing corporation.

(2) "Registered holder" means the holder or owner of shares or other securities as shown upon the records maintained by or on behalf of the issuer for that purpose.

(3) "Redemption" includes the surrender, cancellation, or payment in satisfaction of or with respect to shares or other securities by an issuer.

(b) When a corporation has duly and properly called for redemption of any securities and the registered holder of the securities has been sent notice of call at his or her last address as it appears on the records of the corporation but fails to present the certificate for the securities or otherwise take action as required by the call within 60 days of the effective date of the call or such longer time as may be specified in the notice of the call, then the corporation may transfer the money or other property distributable upon the redemption to a trustee, for the benefit of the registered owner or his or her successors in title, and thereupon the securities shall be deemed as of the effective date of the call to have been redeemed, canceled, or paid and no longer outstanding.

(c) In order for the transfer to the trustee permitted by subsection (b) of this Code section to be effective for this purpose, the corporation must have adopted a plan therefor prior to the call, and must have sent notice to the registered holder of the securities of the details of the plan, including the name and address of the trustee, at the time of the sending of the notice of the call. The registered holder for whom the transfer in trust is made or his or her successors in title shall have only the right to obtain the money or other property from the trustee:

(1) In the case of certificated securities, upon surrender to the trustee of the certificates involved; and

(2) In the case of uncertificated securities, upon satisfying the trustee that he or she was the registered holder.

(d) Any money or other property held by the trustee which is not claimed by the registered holder within six years from the date of the transfer to the trustee shall be distributed to the persons and in the manner provided in the plan previously adopted or, if the provisions for distribution are held to be invalid or the plan does not contain provisions for distribution, shall be distributed to and become the property of the Board of Regents of the University System of Georgia, to be used for educational purposes. The trustee appointed under this Code section must be a bank or trust company located in the State of Georgia.

(e) The procedures specified in subsections (b) through (d) of this Code section shall not be exclusive of other procedures, not otherwise inconsistent with law, specified in the articles of incorporation, including an amendment of the articles of incorporation adopted by the board of directors establishing and designating a series of preferred shares and fixing and determining the relative rights and preferences of a series of preferred shares, or in the instruments governing any other securities, with respect to the redemption of the securities, and, upon compliance by a corporation with any of those procedures, the shares or other securities shall be deemed as of the date provided in those procedures to have been redeemed, canceled, and no longer to be outstanding, regardless of whether the holders thereof shall have taken the steps provided in this Code section. (Code 1981, § 14-2-641, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 7.)

The 2004 amendment, effective July 1, 2004, inserted "or her" throughout subsections (b) and (c); substituted "sent notice" for "mailed notice" near the beginning of subsections (b) and (c); and, in subsection (c), substituted "sending" for "mailing" near the end of the first sentence, deleted a comma following "made" and following "title" in the second sentence, and inserted "or she" near the end of paragraph (c)(2).

COMMENT

Note to 2004 Amendment

Prior to the 2004 amendments, notices under this Code section were required to be "mailed". The 2004 amendments, which change such references from "mailed" to "sent", seek to harmonize this Code section those amendments to this Chapter which contemplate notice by electronic transmission.

ARTICLE 7

SHAREHOLDERS

PART 1

MEETINGS

14-2-702. Special meeting.

(a) A corporation shall hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws;

(2) Except as to corporations described in paragraph (3) of this subsection, if the holders of at least 25 percent, or such greater or lesser percentage as may be provided in the articles of incorporation or bylaws, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting, sign, date, and deliver to the corporation one or more demands in writing or by electronic transmission for the meeting describing the purpose or purposes for which it is to be held; or

(3) In the case of a corporation having 100 or fewer shareholders of record, if the holders of at least 25 percent, or such lesser percentage as may be provided in the articles of incorporation or bylaws, of all the votes entitled to be cast on any issue to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more demands in writing or by electronic means for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under Code Section 14-2-703 or Code Section 14-2-707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by subsection (c) of Code Section 14-2-705 may be conducted at a special shareholders' meeting.

(e) Unless otherwise provided in the articles of incorporation, a demand by a shareholder for a special meeting may be revoked by a written or electronic transmission to that effect by the shareholder received by the corporation prior to the call of the special meeting.

(f) A bylaw provision governing the percentage of shares required to call special meetings is not a quorum or voting requirement. (Code 1981, § 14-2-702, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 21; Ga. L. 1997, p. 1165, § 4; Ga. L. 2004, p. 508, § 8.)

The 2004 amendment, effective July 1, 2004, substituted "demands in writing or by electronic transmission" for "written demands" in paragraph (a)(2); substituted "demands in writing or by electronic means" for "written demands" in paragraph (a)(3); and, in subsection (e), deleted "written" preceding "demand" near the beginning and substituted "written or electronic transmission" for "writing" near the middle.

COMMENT

Note to 2004 Amendment

The 2004 amendments permit a demand for a special meeting to be made by electronic transmission.

14-2-704. Action without meeting.

(a) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action or, if so provided in the articles of incorporation, by persons who would be entitled to vote at a meeting shares having voting power to cast not less than the minimum number (or numbers, in the case of voting by groups) of votes that would be necessary to authorize or take the action at a meeting at which all shareholders entitled to vote were present and voted. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by shareholders entitled to take action without a meeting and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) No written consent signed under this Code section shall be valid unless:

(1) The consenting shareholder has been furnished the same material that, under this chapter, would have been required to be sent to shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action,

including notice of any applicable dissenters' rights as provided in Code Section 14-2-1320; or

(2) The written consent contains an express waiver of the right to receive the material otherwise required to be furnished.

(c) If the articles of incorporation give the shareholders the right to cumulate their votes, action with respect to any election of directors may be taken without a meeting only by written consent signed by all the shareholders entitled to vote on the election of directors.

(d) If not otherwise fixed under Code Section 14-2-703 or Code Section 14-2-707, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent. No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest date appearing on a consent delivered to the corporation in the manner required by this Code section, evidence of written consents signed by shareholders sufficient to act by written consent are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

(e) A consent signed under this Code section has the effect of a meeting vote and may be described as such in any document. A consent delivered to the corporation shall become effective on the date of delivery of the last consent required to take action under subsection (d) of this Code section or such later date as it may provide.

(f) If action is taken under this Code section by less than all of the shareholders entitled to vote on the action, all voting shareholders on the record date who did not participate in taking the action shall be given written notice of the action, together with the material described in paragraph (1) of subsection (b) of this Code section, not more than ten days after the taking of action without a meeting.

(g) If this chapter requires that notice of action by shareholders be given to nonvoting shareholders and the action is taken by voting shareholders without a meeting, the corporation must give its nonvoting shareholders written notice of the action not more than ten days after the taking of action without a meeting. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(h) An electronic transmission which is transmitted by a shareholder that evidences a shareholder's consent, requests or demands an action

to be taken by the corporation, or provides notice to the corporation under this chapter shall be deemed to be written, signed, and dated for the purposes of this chapter, provided that any such electronic transmission sets forth or is delivered with information from which the corporation can determine:

(1) That the electronic transmission was transmitted by the shareholder; and

(2) The date on which such shareholder transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent, request, demand, or notice was signed. (Code 1981, § 14-2-704, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 23; Ga. L. 1993, p. 1231, § 7; Ga. L. 1997, p. 1165, § 5; Ga. L. 2004, p. 508, § 9; Ga. L. 2005, p. 60, § 14/HB 95.)

The 2004 amendment, effective July 1, 2004, added subsection (h).

The 2005 amendment, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, revised language and punctuation in subsection (h).

COMMENT

Note to 2004 Amendment

The 2004 amendments permit a consent, demand, or notice by a shareholder under this Chapter to be delivered by electronic transmission, if the corporation can determine from the electronic transmission that it was delivered by such shareholder, and can further determine the date upon which such shareholder transmitted such electronic transmission.

14-2-705. Notice of meeting.

(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under Code Section 14-2-703 or Code Section 14-2-707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Code Section 14-2-707, however, notice of the adjourned meeting must be given under this Code section to persons who are shareholders as of the new record date.

(f) Notwithstanding the provisions of this Code section, a corporation need not provide any notice required by this Code section to a shareholder to whom:

(1) Notices of two consecutive annual meetings; or

(2) All and at least two payments of dividends or interest on securities or dividend reinvestment confirmations during a 12 month period

have been mailed addressed to the shareholder's address shown in the corporation's current record of shareholders and have been returned as undeliverable. Any action or meeting which shall be taken or held without notice to any such shareholder shall have the same force and effect as if such notice had been duly given. If any such shareholder shall deliver to the corporation written notice setting forth such shareholder's then current address, the requirement that notice be given to such shareholder shall be reinstated. If the action taken by the corporation requires the filing of a document under any other provision of this chapter, the document need not state that notice was not given to shareholders to whom notice was not required to be given pursuant to this subsection. (Code 1981, § 14-2-705, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 10.)

The 2004 amendment, effective July 1, 2004, added subsection (f).

14-2-706. Waiver of notice.

(a) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing or by electronic transmission, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting

objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

(c) Unless required by the bylaws, neither the business transacted nor the purpose of the meeting need be specified in the waiver, except that any waiver by a shareholder of the notice of a meeting of shareholders with respect to an amendment of the articles of incorporation pursuant to Code Section 14-2-1003, a plan of merger or share exchange pursuant to Code Section 14-2-1103, a sale of assets pursuant to Code Section 14-2-1202, or any other action which would entitle the shareholder to dissent pursuant to Code Section 14-2-1302 and obtain payment for his shares shall not be effective unless:

(1) Prior to the execution of the waiver, the shareholder shall have been furnished the same material that under this chapter would have been required to be sent to the shareholder in a notice of the meeting, including notice of any applicable dissenters' rights as provided in Code Sections 14-2-1320 and 14-2-1322; or

(2) The waiver expressly waives the right to receive the material required to be furnished. (Code 1981, § 14-2-706, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 11.)

The 2004 amendment, effective July 1, 2004, inserted "or by electronic transmission" in the second sentence of subsection (a).

COMMENT

Note to 2004 Amendment

The 2004 amendments permit a shareholder to waive, by electronic transmission, any notice required by this Chapter, the articles of incorporation, or bylaws.

PART 2

VOTING

14-2-720. Shareholders' list for meeting.

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group and within each voting group by class or series of shares and show the address of and number of shares held by each shareholder. Nothing contained in this Code section shall require the corporation to include e-mail addresses or other information for delivery of electronic transmissions on such list.

(b) The shareholders' list must be available for inspection by any shareholder, his or her agent, or his or her attorney:

(1) On a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting upon request; or

(2) During ordinary business hours at the principal place of business of the corporation.

In the event that the corporation makes the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to shareholders of the corporation. If the meeting is to be held in person, then the list shall be produced and kept at the time and place of the meeting during the duration of the meeting and may be inspected by any shareholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any shareholder during the duration of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

(c) If the corporation refuses to allow a shareholder, his agent, or his attorney to inspect the shareholders' list at the meeting, the superior court of the county where a corporation's registered office is located, on application of the shareholder, may summarily order the inspection at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection is complete.

(d) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting. (Code 1981, § 14-2-720, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 12.)

The 2004 amendment, effective July 1, 2004, in subsection (a), deleted the parentheses in the second sentence and added the last sentence; and substituted the present provisions of subsection (b) for the former provisions which read: "The shareholders' list must be available for inspection by any shareholder, his agent, or his attorney at the time and place of the meeting."

COMMENT

Note to 2004 Amendment

The 2004 amendments permit a corporation to make a shareholders' list available for inspection on a reasonably accessible electronic network, provided that the corporation takes reasonable steps to ensure that such information is available only to the shareholders of the corporation.

14-2-728. Voting for directors; cumulative voting.

(a) Unless otherwise provided in:

(1) The articles of incorporation; or

(2) A bylaw that fixes a greater voting requirement for the election of directors and that is adopted by the board of directors of a corporation having shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association,

directors are elected by a plurality of the votes cast by the shares entitled to vote in the election. Action to elect directors may be taken at a meeting only if a quorum is present.

(b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(c) A statement included in the articles of incorporation that all or a designated voting group of shareholders are entitled to cumulate their votes for directors (or words of similar import) means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(1) The meeting notice or proxy statement accompanying the notice states that cumulative voting will be in effect; or

(2) A shareholder who has the right to cumulate his votes gives notice to the corporation not less than 48 hours before the time set for the meeting of his intent to cumulate his votes during the meeting, and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice. (Code 1981, § 14-2-728, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2008, p. 253, § 2/SB 436.)

The 2008 amendment, effective July 1, 2008, rewrote subsection (a).

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008).

COMMENT

Note to 2008 Amendment

The 2008 amendment to subsection (a) of Code Section 14-2-728 provides that the statutory default plurality rule may be altered in the articles of incorporation of any corporation or in a bylaw adopted by the board of directors of a publicly traded

corporation. In light of the holdover rule in subsection (e) of Code Section 14-2-805, a corporation that adopts a variation from the statutory default plurality rule may wish to consider using advance conditional resignations as permitted by Code Section 14-2-807, such as a resignation conditioned upon acceptance by the board if the director fails to receive the requisite vote.

Part 3

Voting Trusts and Agreements

14-2-732. Shareholder agreements.

Law reviews. — For article, "2008 Annual Review of Case Law Development," see 14 (No. 6) Ga. St. B.J. 28 (2009). For article, "Business Associations," see 63 Mercer L. Rev. 83 (2011).

JUDICIAL DECISIONS

Twenty year time limit did not apply retroactively to affect prior existing shareholder agreements. — A 1992 shareholder's agreement that adopted the provisions of a 1987 shareholder's agreement did not expire in 2007, or 20 years after 1987, based on O.C.G.A. § 14-2-732(b)(3), because O.C.G.A. § 14-2-732 was not enacted until 2000 and did not operate retroactively to affect the prior agreements. Ansley v. Ansley, 307 Ga. App. 388, 705 S.E.2d 289 (2010).

Part 4

Derivative Proceedings

JUDICIAL DECISIONS

Claim for misappropriation of corporate assets to be brought on behalf of corporation. — Minority shareholder's claims against other shareholders for refusing the minority shareholder's request to inspect corporate records was properly dismissed; such a claim could only be brought against the corporation pursuant to O.C.G.A. § 14-2-1604. The minority shareholder's claim for misappropriation of corporate assets was also dismissed because it was a derivative claim, required to be brought on behalf of the corporation pursuant to O.C.G.A. § 14-2-740 et seq. Barnett v. Fullard, 306 Ga. App. 148, 701 S.E.2d 608 (2010).

14-2-741. Standing.

JUDICIAL DECISIONS

Debenture v. equity claims. — In an action for fraud, conspiracy, and conversion, a group of debenture-holding plaintiffs who did not seek rescission, but sought only monetary damages at trial, were held to have affirmed the debentures, and despite this, could still affirm the contract and sue for damages resulting from the fraud; moreover, considering that claims for fraud and conspiracy made by the equity-holding plaintiffs were personal, the fraud claims were not dependent on the character of the investments as either debt or equity. Argentum Int'l, LLC v. Woods, 280 Ga. App. 440, 634 S.E.2d 195 (2006).

Objecting shareholder improperly denied intervention. — In a derivative

action suit, a trial court abused its discretion by denying a minority shareholder's motion to intervene since the motion was timely and the minority shareholder established that the minority shareholder's interests were not adequately represented by the suing shareholder based on the large investment the minority shareholder had in the corporation and the fact that the settlement reached in the action would impact the minority shareholder's direct claims against the corporation. Further, the minority shareholder was entitled to a determination that the suing shareholder had adequately represented the corporation's interests up to and including the reaching of the settlement. Stephens v. McGarrity, 290 Ga. App. 755, 660 S.E.2d 770 (2008).

Stockholder lacked standing after redeeming shares. — Since a stockholder had redeemed the shares in a corporation, the shareholder lacked standing to maintain a derivative action against the corporation seeking damages arising from a reverse stock split. Haskins v. Haskins, 278 Ga. App. 514, 629 S.E.2d 504 (2006).

14-2-742. Demand.

JUDICIAL DECISIONS

No abuse of discretion by dismissal. — Trial court did not abuse the court's discretion in dismissing a shareholder's derivative action suit because the challenging shareholder failed to provide evidence to refute the evidence of the board and executives that the demand review committee members were independent. Benfield v. Wells, 324 Ga. App. 85, 749 S.E.2d 384 (2013).

14-2-744. Dismissal.

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008). For article, "2013 Georgia Corporation and Business Organization Case Law Developments," see 19 Ga. St. B.J. 28 (April 2014).

JUDICIAL DECISIONS

Good faith. — Trial court did not err in dismissing the shareholder derivative action filed by the shareholder, as it was within the trial court's discretion to dismiss the action once the shareholder failed to initiate discovery to determine whether the report filed by the special litigation committee that responded to the shareholder's claims of corporate improprieties and which concluded that the shareholder's claims were meritless was made in good faith and properly concluded that pursuing a lawsuit against the corporation was not in the corporation's best interests. Thompson v. Scientific Atlanta, Inc., 275 Ga. App. 680, 621 S.E.2d 796 (2005).

Trial court abused its discretion in approving settlement. — In a derivative action suit, the trial court abused its discretion when it approved a settlement and dismissed the action since the $2.54 million that was part of the settlement agreement was to be paid directly to the suing shareholder, with no real gain being obtained on behalf of the corporation. Stephens v. McGarrity, 290 Ga. App. 755, 660 S.E.2d 770 (2008).

No abuse of discretion by dismissal. — Trial court did not abuse the court's discretion in dismissing a shareholder's derivative action suit because the challenging shareholder failed to provide evidence to refute the evidence of the board and executives that the demand review committee members were independent. Benfield v. Wells, 324 Ga. App. 85, 749 S.E.2d 384 (2013).

14-2-745. Discontinuance or settlement.

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008). For article, "2008 Annual Review of Case Law Development," see 14 (No. 6) Ga. St. B.J. 28 (2009).

JUDICIAL DECISIONS

Trial court abused its discretion in approving settlement. — In a derivative action suit, the trial court abused its discretion when it approved a settlement and dismissed the action since the $2.54 million that was part of the settlement agreement was to be paid directly to the suing shareholder, with no real gain being obtained on behalf of the corporation. Stephens v. McGarrity, 290 Ga. App. 755, 660 S.E.2d 770 (2008).

14-2-746. Payment of expenses.

JUDICIAL DECISIONS

Award of attorney's fees.

In a derivative suit in which former shareholders of a borrower corporation alleged claims for breach of fiduciary duty and fraud, the borrower corporation, its board of directors, another corporation, and a financial company were entitled to a reasonable award of fees and expenses after: (1) the shareholders pursued their claims in bad faith because they ignored binding precedent stating that former shareholders lacked standing to file derivative actions; and (2) the fees and expenses were supported by records detailing the time spent on each task and affidavits attesting to the reasonableness of the hours spent on each task and the rates charged. Hantz v. Belyew, No. 1:05-CV-1012-JOF, 2006 U.S. Dist. LEXIS 82019 (N.D. Ga. Nov. 8, 2006).

Fees not awarded. — The shareholders' claims for breach of fiduciary and fraud against a bankrupt corporation, its board of directors, and two investor corporations were dismissed because the shareholders no longer owned any shares in the bankrupt corporation and therefore did not meet the ownership requirements of Fed. R. Civ. P. 23.1, the shareholders were not entitled to attorney's fees pursuant to O.C.G.A. § 14-2-746. Hantz v. Belyew, No. 1:05-CV-1012-JOF, 2005 U.S. Dist. LEXIS 41690 (N.D. Ga. Mar. 23, 2005).

Partial award of fees. — In a derivative suit in which former shareholders of a borrower corporation alleged claims for breach of fiduciary duty, conspiracy, and fraud, the borrower corporation, its board of directors, another corporation, and a financial company were entitled to a reasonable award of fees and expenses incurred in "case preparation" as that term has been defined in relation to 42 U.S.C. § 1988, but, in accordance with 28 U.S.C. § 1920, the court declined to award expenses for computerized research and search charges. The court also declined to award sums of $20,000 or $9,000 for attorney's fees incurred in the preparation of the motion for fees and instead awarded $5,000. Hantz v. Belyew, No. 1:05-CV-1012-JOF, 2006 U.S. Dist. LEXIS 82019 (N.D. Ga. Nov. 8, 2006).

14-2-747. Applicability to foreign corporations.

JUDICIAL DECISIONS

Illustrative cases. — In the shareholders' suit alleging derivative claims for fraud and breach of fiduciary duty against a bankrupt corporation, its board of directors, and two investor corporations, pursuant to O.C.G.A. § 14-2-747, Florida law

applied because the bankrupt corporation was incorporated in Florida. Hantz v. Belyew, No. 1:05-CV-1012-JOF, 2005 U.S. Dist. LEXIS 41690 (N.D. Ga. Mar. 23, 2005).

ARTICLE 8

DIRECTORS AND OFFICERS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Oppressive Conduct by Majority Shareholders, Directors, or Those in Control of Corporation, 5 POF2d 645.

Dissension or Deadlock of Corporate Directors or Shareholders, 6 POF2d 387.

Personal Liability of Corporate Officer on Promissory Note, 8 POF2d 193.

Corporate Opportunity Doctrine — Business Opportunities in "Line of Business" of Corporation, 8 POF2d 315.

Corporate Officer or Director as Alter Ego of Corporation, 9 POF2d 57.

Participation by Corporate Officer in Illegal Issuance of Securities, 9 POF2d 577.

Improper Issuance of Corporate Stock to Directors or Officers, 15 POF2d 417.

Wrongful Failure of Corporate Directors to Declare Dividend, 22 POF2d 593.

Corporate Opportunity Doctrine — Fairness of Corporate Official's Acquisition of Business Opportunity, 30 POF2d 291.

Gifts of Corporate Stock, 39 POF2d 373.

Corporate Director's Breach of Fiduciary Duty to Creditors, 16 POF3d 583.

Grounds for Disregarding the Corporate Entity and Piercing the Corporate Veil, 45 POF3d 1.

Liability of Shareholder for Wrongfully Transferring or Assigning Corporate Common Stock Shares to Third Party, 47 POF3d 139.

Company's Liability for the Entity's Failure to Acquire Fictitious Name Certification, 56 POF3d 103.

Liability for a Corporation's Failure to File as a Corporation Doing Business in a Foreign Jurisdiction, 60 POF3d 363.

Part 1

Board of Directors

14-2-807. Resignation of directors.

(a) A director may resign at any time by delivering notice in writing or by electronic transmission to the board of directors, its chairperson, or to the corporation.

(b) A resignation shall be effective when the notice is delivered unless the notice specifies either a later effective date or an effective date determined upon the happening of an event.

(c) A resignation that is conditioned upon the happening of an event may provide that it is irrevocable. (Code 1981, § 14-2-807, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 13; Ga. L. 2008, p. 253, § 3/SB 436.)

The 2004 amendment, effective July 1, 2004, substituted "notice in writing or by electronic transmission" for "written notice" in the middle of subsection (a).

The 2008 amendment, effective July 1, 2008, in subsection (a), substituted "chairperson" for "chairman"; in subsection (b), substituted "shall be effective" for "is effective" near the beginning, inserted "either" near the middle, and added "or an effective date determined upon the happening of an event" at the end; and added subsection (c).

COMMENT

Note to 2004 Amendment

The 2004 amendments permit a director to submit his or her resignation by electronic transmission.

Note to 2008 Amendment

The 2008 amendment to subsection (b) of Code Section 14-2-807 expressly recognizes that a director's resignation may be effective upon a date determined upon the happening of an event. The 2008 amendment to subsection (c) of Code Section 14-2-807 expressly recognizes that a resignation conditioned upon the happening of an event may be made irrevocable.

14-2-810. Vacancy on board.

(a) Unless the articles of incorporation or a bylaw approved by the shareholders provides otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The shareholders may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group or the remaining directors elected by that voting group are entitled to vote to fill the vacancy.

(c) A vacancy that may occur at a later date (by reason of a resignation effective at a later date under subsection (b) of Code Section 14-2-807 or otherwise) may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs. (Code 1981, § 14-2-810, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 32; Ga. L. 2008, p. 253, § 4/SB 436.)

The 2008 amendment, effective July 1, 2008, in subsection (c), substituted "may occur at a later date" for "will occur at a specific later date" near the beginning, and inserted a comma after the first occurrence of "occurs".

COMMENT

Note to 2008 Amendment

The 2008 amendment to subsection (c) of Code Section 14-2-810 deleted the word "specific" before "later date" to clarify that subsection (c) also applies in the case of a resignation effective upon the happening of an event as contemplated in subsection (b) of Code Section 14-2-807. Subsection (c) of Code Section 14-2-810 also was amended to recognize that a resignation conditioned upon the happening of an event as contemplated in subsection (b) of Code Section 14-2-807 may never become effective and therefore a vacancy in such scenario may not occur.

Part 2

Meetings and Action of the Board

14-2-821. Action without meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more consents in writing or by electronic transmission describing the action taken, signed by each director, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A consent signed and delivered by a director under this Code section has the effect of a meeting vote and may be described as such in any document. (Code 1981, § 14-2-821, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 14.)

The 2004 amendment, effective July 1, 2004, substituted "consents in writing or by electronic transmission" for "written consents" in the second sentence of subsection (a), and inserted "and delivered by a director" near the beginning of subsection (b).

COMMENT

Note to 2004 Amendment

The 2004 amendments permit actions of directors required or permitted by this Chapter to be taken without a meeting by electronic transmission.

14-2-823. Waiver of notice.

(a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this Code section, the waiver must be in writing or by electronic transmission, signed by the director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. (Code 1981, § 14-2-823, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 15.)

The 2004 amendment, effective July 1, 2004, inserted "or by electronic transmission" in the middle of the second sentence of subsection (a).

COMMENT

Note to 2004 Amendment

The 2004 amendments permit a director to waive, by electronic transmission, any notice required by this Chapter, the articles of incorporation, or bylaws.

14-2-825. Committees.

JUDICIAL DECISIONS

Unauthorized removal of directors. — It was properly found that actions taken during meetings of a nonprofit corporation's purported executive committee, including an attempt to reconstitute the board of directors (board) by naming new board members, were void because: (1) no notice for the meetings was given; and (2) the power to name new board members was reserved to the board, under former O.C.G.A. § 14-2-825(e)(3) (now O.C.G.A. § 14-2-825(d)(2)), and could not be exercised by a committee, so this committee did not properly set a subsequent board meeting, rendering the actions of that board meeting void. Harris v. SCLC, Inc., 313 Ga. App. 363, 721 S.E.2d 906 (2011).

Part 3

Standards of Conduct

Law reviews. — For survey article on business associations law, see 59 Mercer L. Rev. 35 (2007).

14-2-830. General standards for directors.

Law reviews. — For survey article on trial practice and procedure, see 59 Mercer L. Rev. 423 (2007). For annual review of Georgia Corporation and Business Organization Law, see 15 (No. 7) Ga. St. B.J. 20 (2010). For annual survey of law on business associations, see 62 Mercer L. Rev. 41 (2010). For article, "2013 Georgia Corporation and Business Organization Case Law Developments," see 19 Ga. St. B.J. 28 (April 2014).

JUDICIAL DECISIONS

Business judgment rule. — In a suit against an employer by a former employee who claimed that the employer and the officers had the duty to tell the employee,

as a minority shareholder, of a potential merger prior to the sale of the former employee's stock, the employer was entitled to a directed verdict on the employee's ordinary negligence claim; officers and directors were protected from liability for ordinary negligence under the business judgment rule, O.C.G.A. §§ 14-2-830 and 14-2-842. Flexible Prods. Co. v. Ervast, 284 Ga. App. 178, 643 S.E.2d 560 (2007).

Trial court did not err in granting a former employee's motion for summary judgment on a former employer's counterclaim for breach of fiduciary duty because the allegations in the complaint in conjunction with the record evidence were simply not sufficient to rebut the presumption that the employee made good faith business decisions in an informed and deliberate manner or to present a jury question as to whether he engaged in fraud, bad faith, or an abuse of discretion; even if it was assumed that the employee's allegedly selfish motives could render the employer's financial success a breach of duty to the company, the employer failed to submit any specific evidence in support of its claims, and the employer's allegations regarding deficiencies in the employee's management and budgeting amounted, at best, to a showing of negligent or careless performance of the employee's duties, which was insufficient to show breach of fiduciary duty as a matter of law. Brock Built, LLC v. Blake, 300 Ga. App. 816, 686 S.E.2d 425 (2009).

Fiduciary duty in corporate bankruptcy.

No evidence established that the board, and, more specifically, the defendants, approved or gave authority to enter into a consulting arrangement; the spouse of the debtor's chief executive officer was hired as the consultant under the agreement to promote sales. There was no evidence to allow the court to deduce that by entering into this arrangement, defendants failed to meet their statutory obligations under O.C.G.A. § 14-2-830 because, in December of 2000, debtor was not insolvent, and the concept of seeking outside assistance to boost sales was certainly consistent with maximizing profits for shareholders; similar evidence problems existed with the allegation that a cruise offered to qualifying employees constituted a breach of fiduciary duty by defendants. Hays v. Curry (In re Maxxis Group), No. 03-77243; No. 03-77244; No. 03-77245, 2009 Bankr. LEXIS 4249 (Bankr. N.D. Ga. Sept. 29, 2009).

Knowledge of company's financial condition. — Knowledge of the financial condition of the company does not trigger liability for subsequent actions; breaches of good faith and due care are required. There was simply insufficient evidence to impose liability with respect to the issuance of the asset purchase agreements. Hays v. Curry (In re Maxxis Group), No. 03-77243; No. 03-77244; No. 03-77245, 2009 Bankr. LEXIS 4249 (Bankr. N.D. Ga. Sept. 29, 2009).

Absence of a turnaround plan. — Court refused to find breach of a corporate director's duty based solely on the absence of a turnaround plan. Such a standard was not supported by Georgia statute or common law; instead, courts deferred to the strategies and judgment of corporate management. Hays v. Curry (In re Maxxis Group), No. 03-77243; No. 03-77244; No. 03-77245, 2009 Bankr. LEXIS 4249 (Bankr. N.D. Ga. Sept. 29, 2009).

Application to adversary proceeding for non-dischargeability of debt. — Duties of a debtor, as an officer and director of a corporation, as outlined in O.C.G.A. §§ 14-2-830 and 14-2-842, did not create any statutory fiduciary duties that, if breached, would provide grounds for non-dischargeability under 11 U.S.C. § 523(a)(4). Omega Cotton Co. v. Sutton (In re Sutton), No. 07-06006, 2008 Bankr. LEXIS 2593 (Bankr. M.D. Ga. Oct. 2, 2008).

United States Bankruptcy Court for the Northern District of Georgia joined other bankruptcy courts in Georgia in concluding that merely being an officer or director of a corporation, without more, did not create a fiduciary relationship for purposes of nondischargeability of a debt, as Georgia statutes did not impose a heightened duty on an officer or director and did not use the term "fiduciary" to describe the duties or in any way speak in terms of a trust. Hot Shot Kids Inc. v. Pervis (In re Pervis), 497 B.R. 612 (Bankr. N.D. Ga. 2013).

14-2-831. Derivative actions.

JUDICIAL DECISIONS

Misappropriation of corporate opportunity. — Trial court did not err in denying a former president's motion for directed verdict in a corporation's action alleging breach of fiduciary duty and misappropriation of corporate opportunity because the jury was authorized to find that the corporation had an interest or reasonable expectancy in a business prior to its formation by the president and the owner of a competing company, but the president and owner created the business to the exclusion of the corporation; the evidence supported the jury's finding that when the president became a co-owner of the business while remaining an officer of the corporation, the president engaged in competition, in breach of fiduciary duties to the corporation. Brewer v. Insight Tech., Inc., 301 Ga. App. 694, 689 S.E.2d 330 (2009), cert. denied, No. S10C0678, 2010 Ga. LEXIS 455 (Ga. 2010).

Court denied the debtor's motion for summary judgment with respect to usurpation of corporate opportunities in connection with certain of the debtor's pre-resignation activities as the debtor did not show that the corporation could not take advantage of opportunities outside Georgia. Hot Shot Kids Inc. v. Pervis (In re Pervis), 497 B.R. 612 (Bankr. N.D. Ga. 2013).

Breach of fiduciary duty and conversion. — In a suit brought under O.C.G.A. § 14-2-831(a)(1) alleging a breach of fiduciary duty and conversion, the record contained sufficient evidence that a father's son and the son's wife converted over $144,000 of corporate funds for their own use while employed, that the son retained the company telephone number and address book, copied the company's client list for use in a new venture apart from the company, and participated in the taking of company funds months before resigning; however, because the wife was not a corporate officer, the breach of fiduciary duty claim asserted against the wife lacked merit. Lou Robustelli Mktg. Servs. v. Robustelli, 286 Ga. App. 816, 650 S.E.2d 326 (2007).

Recovery for misappropriation of corporate opportunity rejected. Trial court properly granted summary judgment to a former vice president in a breach of the duty of loyalty claim by a former employer, as there was no proof that there was a business opportunity for the employer in a client that the vice president's new competing company thereafter solicited; accordingly, the employer did not have a "beachhead" or reasonable interest or expectancy in the client's accounts, pursuant to O.C.G.A. § 14-2-831(a)(1)(C). MAU, Inc. v. Human Techs., Inc., 274 Ga. App. 891, 619 S.E.2d 394 (2005).

Taxpayer actions. — Local government provisions applicable to municipal corporations do not provide for derivative actions by taxpayers in the name of a municipality. Taxpayers may bring direct actions in mandamus to compel or enjoin city officials to perform a public duty or sue city officials for damages in connection with the unlawful expenditure of public funds with any recovery to be paid to the city. Common Cause/Ga. v. Campbell, 268 Ga. App. 599, 602 S.E.2d 333 (2004), aff'd, 279 Ga. 480, 614 S.E.2d 761 (2005).

Application of "right for any reason" rule when claims not against officer or director. — O.C.G.A. § 14-2-831(a)(1)(C) provides that a corporation may sue an officer or director for the misappropriation of any business opportunity of the corporation. However, because the defendants were not officers or directors of the plaintiff corporation, the plaintiff's claim for misappropriation of corporate opportunity was properly dismissed under the "right for any reason" rule. Prof'l Energy Mgmt. v. Necaise, 300 Ga. App. 223, 684 S.E.2d 374 (2009).

No abuse of discretion by dismissal. — Trial court did not abuse the court's discretion in dismissing a shareholder's derivative action suit because the challenging shareholder failed to provide evidence to refute the evidence of the board and executives that the demand review committee members were independent.

Benfield v. Wells, 324 Ga. App. 85, 749 S.E.2d 384 (2013).

Cited in KEG Techs., Inc. v. Laimer, 436 F. Supp. 2d 1364 (N.D. Ga. 2006); Lubin v. Skow, No. 10-10011, 2010 U.S. App. LEXIS 12140 (11th Cir. June 14, 2010) (Unpublished).

Part 4

Officers

14-2-842. Standards of conduct for officers.

Law reviews. — For survey article on business associations law, see 59 Mercer L. Rev. 35 (2007). For survey article on trial practice and procedure, see 59 Mercer L. Rev. 423 (2007).

JUDICIAL DECISIONS

Business judgment rule applied.

In a suit against an employer by a former employee who claimed that the employer and the officers had the duty to tell the employee, as a minority shareholder, of a potential merger prior to the sale of the former employee's stock, the employer was entitled to a directed verdict on the employee's ordinary negligence claim; officers and directors were protected from liability for ordinary negligence under the business judgment rule, O.C.G.A. §§ 14-2-830 and 14-2-842. Flexible Prods. Co. v. Ervast, 284 Ga. App. 178, 643 S.E.2d 560 (2007).

Trial court did not err in granting a former employee's motion for summary judgment on a former employer's counterclaim for breach of fiduciary duty because the allegations in the complaint in conjunction with the record evidence were simply not sufficient to rebut the presumption that the employee made good faith business decisions in an informed and deliberate manner or to present a jury question as to whether he engaged in fraud, bad faith, or an abuse of discretion; even if it was assumed that the employee's allegedly selfish motives could render the employer's financial success a breach of duty to the company, the employer failed to submit any specific evidence in support of its claims, and the employer's allegations regarding deficiencies in the employee's management and budgeting amounted, at best, to a showing of negligent or careless performance of the employee's duties, which was insufficient to show breach of fiduciary duty as a matter of law. Brock Built, LLC v. Blake, 300 Ga. App. 816, 686 S.E.2d 425 (2009).

Fiduciary duty in corporate bankruptcy.

There is no meaningful difference between the two standards set forth in O.C.G.A. §§ 14-2-842(a)(2) and 51-1-2. Rosenfeld v. Rosenfeld, 286 Ga. App. 61, 648 S.E.2d 399 (2007), cert. denied, 2007 Ga. LEXIS 613 (Ga. 2007).

Application in adversary proceeding in officer's bankruptcy. — Duties of a debtor, as an officer and director of a corporation, as outlined in O.C.G.A. §§ 14-2-830 and 14-2-842, did not create any statutory fiduciary duties that, if breached, would provide grounds for non-dischargeability under 11 U.S.C. § 523(a)(4). Omega Cotton Co. v. Sutton (In re Sutton), No. 07-06006, 2008 Bankr. LEXIS 2593 (Bankr. M.D. Ga. Oct. 2, 2008).

Jury instructions. — Conflicting jury charges required a new trial in a suit against an employer by a former employee who claimed that the employer and the officers had the duty to tell the employee, as a minority shareholder, of a potential merger prior to the sale of the former employee's stock; the jury charges failed to address the relationship between the general rule under O.C.G.A. § 15-19-17 that advice of counsel did not protect a defendant from liability and the exception for corporate directors and officers under

O.C.G.A. §§ 14-2-830 and 14-2-842. Flexible Prods. Co. v. Ervast, 284 Ga. App. 178, 643 S.E.2d 560 (2007).

The trial court properly charged the jury that a corporate officer's fiduciary duty required the officer to exercise "all due care and diligence," as there was no meaningful difference between this and the "ordinarily prudent person" standard of O.C.G.A. § 14-2-842(a)(2); furthermore, the trial court had first charged the standard as worded in the statute, then simply explained this standard as referring to "all due care and diligence." Rosenfeld v. Rosenfeld, 286 Ga. App. 61, 648 S.E.2d 399 (2007), cert. denied, 2007 Ga. LEXIS 613 (Ga. 2007).

Cited in Lubin v. Skow, No. 10-10011, 2010 U.S. App. LEXIS 12140 (11th Cir. June 14, 2010) (Unpublished).

14-2-843. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice in writing or by electronic transmission to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. A copy of the notice of resignation as delivered to the corporation may be filed with the Secretary of State.

(b) A board of directors may remove any officer at any time with or without cause. Unless the bylaws provide otherwise, any officer or assistant officer appointed by an authorized officer pursuant to subsection (b) of Code Section 14-2-840 may be removed at any time with or without cause by any officer having authority to appoint such officer or assistant officer. (Code 1981, § 14-2-843, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1995, p. 482, § 5; Ga. L. 1996, p. 1203, § 4; Ga. L. 2004, p. 508, § 16.)

The 2004 amendment, effective July 1, 2004, in subsection (a), inserted "in writing or by electronic transmission" in the first sentence and, in the second sentence, substituted "effective" for "delivered" and substituted "future" for "later".

COMMENT

Note to 2004 Amendment

The 2004 amendments permit an officer to submit his or her resignation by electronic transmission.

JUDICIAL DECISIONS

Wrongful removal of director. — Director of a medical practice wrongfully terminated the only other director without authority, based on statutory authority as well as the bylaws of the practice, which only allowed the board of directors to remove the other director. Ga. Dermatologic Surgery Ctrs., P.C. v. Pharis, 323 Ga. App. 181, 746 S.E.2d 678 (2013).

PART 5

INDEMNIFICATION

14-2-851. Authority to indemnify.

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

14-2-854. Court ordered indemnification and advances for expenses.

(a) A director who is a party to a proceeding because he or she is a director may apply for indemnification or advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(1) Order indemnification or advance for expenses if it determines that the director is entitled to indemnification or advance for expenses under this part; or

(2) Order indemnification or advance for expenses if it determines, in view of all the relevant circumstances, that it is fair and reasonable to indemnify the director or to advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in subsections (a) and (b) of Code Section 14-2-851, failed to comply with Code Section 14-2-853, or was adjudged liable in a proceeding referred to in paragraph (1) or (2) of subsection (d) of Code Section 14-2-851, but if the director was adjudged so liable, the indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification or advance for expenses under paragraph (1) of subsection (a) of this Code section, it shall also order the corporation to pay the director's reasonable expenses to obtain court ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under paragraph (2) of subsection (a) of this Code section, it may also order the corporation to pay the director's reasonable expenses to obtain court ordered indemnification or advance for expenses.

(c) The court may summarily determine, without a jury, a corporation's obligation to advance expenses. (Code 1981, § 14-2-854, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 35; Ga. L. 1996, p. 1203, § 5; Ga. L. 2006, p. 825, § 4/SB 469.)

The 2006 amendment, effective July 1, 2006, inserted "or advance for expenses" near the end of paragraph (a)(1); in subsection (b), in the first sentence, substituted "paragraph (1) of subsection (a) of this Code section, it shall" for "this part, it may" near the middle, substituted "court ordered" for "court-ordered" near the end, added the second sentence; and added subsection (c).

COMMENT

Note to 2006 Amendment

The changes to subsection (a)(1) of Code Section 14-2-854 clarify that the court need not determine a director's ultimate entitlement to indemnification before ordering advancement of expenses. Advancement of expenses may be enforced if the director meets the conditions set forth in Code Section 14-2-853.

The changes to subsection (b) of Code Section 14-2-854, which are based on the provisions of Section 8.54(b) of the Model Business Corporation Act, provide for a mandatory award of litigation expenses incurred by a director in successfully enforcing his or her rights to indemnification or advancement of expenses. Otherwise, the director will not receive the full benefit of the indemnification or advancement award, because it will be reduced by the additional expenses incurred in enforcing those rights. The remainder of the changes to subsection (b) were made for purposes of preserving the court's discretion to award litigation expenses when the court has awarded indemnification or advancement on a discretionary basis.

New subsection (c) of Code Section 18-2-854, which is patterned after Section 145(k) of the General Corporation Law of the State of Delaware, authorizes (but does not require) a court to summarily determine a corporation's obligation to advance expenses without the necessity of a jury trial. Such a proceeding would be comparable to proceedings authorized under Code Section 14-2-1604, which permit the court to "summarily order" inspection and copying of certain categories of records and to mandate "expedited" disposition of applications to inspect other categories of records.

14-2-859. Application of part.

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification or advance funds to pay for or reimburse expenses consistent with this part. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection (c) of Code Section 14-2-853 or subsection (c) of Code Section 14-2-855.

(b) Any provision pursuant to subsection (a) of this Code section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders, partners, or, in the case of limited liability companies, members or managers of a predecessor of the corporation or other entity in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by paragraph (3) of subsection (a) of Code Section 14-2-1106.

(c) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

(d) This part shall not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

(e) Except as expressly provided in Code Section 14-2-857, this part shall not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

(f) Any provision in a corporation's articles of incorporation or bylaws or in a resolution adopted or contract approved by its board of directors or shareholders that obligates the corporation to provide indemnification to the fullest extent permitted by law shall, unless such provision or another provision in the corporation's articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders expressly provides otherwise, be deemed to obligate the corporation:

(1) To advance funds to pay for or reimburse expenses in accordance with Code Section 14-2-853 to the fullest extent permitted by law; and

(2) To indemnify directors to the fullest extent permitted in Code Section 14-2-856, provided that such provision is duly authorized as required in subsection (a) of Code Section 14-2-856, and to indemnify officers to the fullest extent permitted in paragraph (2) of subsection (a) and subsection (b) of Code Section 14-2-857. (Code 1981, § 14-2-859, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1996, p. 1203, § 5; Ga. L. 2006, p. 825, § 5/SB 469.)

The 2006 amendment, effective July 1, 2006, deleted the former last sentence of subsection (a), which read: "Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with Code Section 14-2-853 to the fullest extent permitted by law, unless the provision specifically provides otherwise."; substituted "part shall not" for "part does not" in subsections (d) and (e); and added subsection (f).

COMMENT

Note to 2006 Amendment

New subsection (f) of Code Section 14-2-859 provides statutory rules of construction for "short form" mandatory indemnification provisions, which generally provide that the corporation shall indemnify its officers and directors to "the fullest extent permitted by law." Subsection (f)(1) relocates the language from the last sentence of subsection (a) of former Code Section 14-2-859. Subsection (f)(2) was added for purposes of removing any doubt regarding whether "fullest extent permitted by law" language effectively triggers the extra measures of indemnifi-

cation available under Code Sections 14-2-856 (for directors) and 14-2-857 (for officers). Corporations who do not wish to extend those extra measures of indemnification can do so either by avoiding use of the "fullest extent" language or by expressly providing to the contrary.

Part 6

Conflicting Interest Transactions

14-2-860. Part definitions.

JUDICIAL DECISIONS

Burden of proof. — In a suit by a wife as minority shareholder against her husband as majority shareholder, it was proper to allow the wife to argue that the husband carried the burden to prove that thousands of dollars in corporate charges for his personal expenses were properly disclosed and approved after he shut out the wife from the corporation or were fair under the criteria of O.C.G.A. § 14-2-860 et seq., and it was also proper to give a jury charge on the matter; upon a showing that an officer or director had a beneficial financial interest in a transaction with the corporation, the burden of proof devolved upon the officer or director to show that the transaction received proper approval or was fair to the corporation. Rosenfeld v. Rosenfeld, 286 Ga. App. 61, 648 S.E.2d 399 (2007), cert. denied, 2007 Ga. LEXIS 613 (Ga. 2007).

In a separate suit arising out of a divorce action, wherein a wife sued the husband directly for breach of fiduciary duty regarding corporation assets, the trial court did not err by allowing the wife to argue that the husband carried the burden to prove that thousands of dollars in corporate charges for the husband's personal expenses, after the husband shut the wife out from the corporation, were properly disclosed and approved or were fair under the criteria of O.C.G.A. § 14-2-860 et seq., and in giving a jury charge on the matter; the trial court properly found that the burden of proof on the questions of good faith, fair dealing, and loyalty was placed upon the officer, the husband, who allegedly appropriated the opportunity. Rosenfeld v. Rosenfeld, 286 Ga. App. 61, 648 S.E.2d 399 (2007), cert. denied, 2007 Ga. LEXIS 613 (Ga. 2007).

Breach of fiduciary duty. — Trial court did not err by granting summary judgment to a manufacturer, a company, and a member of the company's board of directors on a president's breach of fiduciary duty claim because the existence of a personal loan the member had obtained from the Russian national did not support an inference of unfairness to the manufacturer. Zions First National Bank v. Macke, 316 Ga. App. 744, 730 S.E.2d 462 (2012).

14-2-861. Judicial action.

JUDICIAL DECISIONS

Burden of proof. — In a separate suit arising out of a divorce action, wherein a wife sued the husband directly for breach of fiduciary duty regarding corporation assets, the trial court did not err by allowing the wife to argue that the husband carried the burden to prove that thousands of dollars in corporate charges for the husband's personal expenses, after the husband shut the wife out from the corporation, were properly disclosed and approved or were fair under the criteria of O.C.G.A. § 14-2-860 et seq., and in giving a jury charge on the matter; the trial court properly found that the burden of proof on the questions of good faith, fair dealing,

and loyalty was placed upon the officer, the husband, who allegedly appropriated the opportunity. Rosenfeld v. Rosenfeld, 286 Ga. App. 61, 648 S.E.2d 399 (2007), cert. denied, 2007 Ga. LEXIS 613 (Ga. 2007).

ARTICLE 9

CLOSE CORPORATIONS

Part 1

Creation

14-2-902. Definition and election of statutory close corporation status.

JUDICIAL DECISIONS

Direct action. — Trial court did not err in denying the plaintiffs' motion for a new trial or, alternatively, judgment notwithstanding the verdict, pursuant to O.C.G.A. § 5-5-25 and O.C.G.A. § 9-11-50, after a jury verdict was rendered in favor of the defendant in a shareholder dispute arising from an agreement for purchase of the defendant's shares, as the direct action by defendant on a counterclaim for breach of fiduciary duty/usurpation of corporate opportunity was properly brought under Thomas because there were exceptional circumstances, despite the fact that the corporation did not fit the definition of a statutory close corporation under O.C.G.A. § 14-2-902. Telcom Cost Consulting, Inc. v. Warren, 275 Ga. App. 830, 621 S.E.2d 864 (2005).

RESEARCH REFERENCES

ALR. — When is corporation close, or closely-held, corporation under common or statutory law, 111 ALR5th 207.

Part 2

Shares

14-2-913. Attempted share transfer in breach of prohibition.

RESEARCH REFERENCES

ALR. — Use of marketability discount in valuing closely held corporation or its stock, 16 ALR6th 693.

14-2-916. Court action to compel purchase.

RESEARCH REFERENCES

ALR. — Use of marketability discount in valuing closely held corporation or its stock, 16 ALR6th 693.

Part 5

Judicial Supervision

14-2-940. Court action to protect shareholders.

JUDICIAL DECISIONS

Inspection rights separately governed by O.C.G.A. § 14-2-1602. — Language of O.C.G.A. § 14-2-940(b), governing closely held corporations, did not preclude a shareholder from availing oneself of the provisions of O.C.G.A. §§ 14-2-1602 and 14-2-1604, relating to inspection of corporate records, in a separate suit despite the shareholder's pending action against the corporation for breach of fiduciary duty. Advanced Automation, Inc. v. Fitzgerald, 312 Ga. App. 406, 718 S.E.2d 607 (2011).

Fraud and justifiable reliance were not required to rescind a president's additional shares of stock that were obtained by telling a director that the director had had sexual relations with an employee at a company party and that the employee was threatening to sue the close corporation; the president's actions were illegal, oppressive, and unfairly prejudicial. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

Fraud not required. — President's motion for a directed verdict was properly denied as fraud was not required in an O.C.G.A. § 14-2-940 suit; the president acted in an illegal, oppressive, and unfairly prejudicial manner, in falsely telling a shareholder that the president had had sex with an employee and that the employee was threatening to sue the corporation for sexual harassment, which forced the shareholder to agree to the transfer of sole control of the corporation to the president. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

There is no requirement under O.C.G.A. § 14-2-940 and O.C.G.A. § 14-2-941 that all elements of fraud must exist before relief can be granted; O.C.G.A. § 14-2-940 explicitly states that relief may be sought where a corporate director has acted in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

President's claim, that a finding that the president fraudulently concealed information from a shareholder was improper, was rejected because a finding of fraud was not required to rescind the issuance of shares to the president under O.C.G.A. §§ 14-2-940 and 14-2-941. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

Fraud not established. — Trial court erred in denying a corporation's motion for summary judgment on an employee's claim seeking the removal of directors and officers pursuant to O.C.G.A. § 14-2-941 because the employee failed to carry the burden on summary judgment of coming forward with rebuttal evidence to demonstrate the existence of a genuine issue of fact on the employee's claim of fraud; the employee did not point to specific evidence showing that the corporation falsely reported income and did so with knowledge that the report was false. VanRan Communs. Servs. v. Vanderford, 313 Ga. App. 497, 722 S.E.2d 110 (2012).

RESEARCH REFERENCES

ALR. — Use of marketability discount in valuing closely held corporation or its stock, 16 ALR6th 693.

14-2-941. Ordinary relief.

JUDICIAL DECISIONS

Fraud not required. — President's motion for a directed verdict was properly denied as fraud was not required in an O.C.G.A. § 14-2-940 suit; the president acted in an illegal, oppressive, and unfairly prejudicial manner, in falsely telling a shareholder that the president had had sex with an employee and that the employee was threatening to sue the corporation for sexual harassment, which forced the shareholder to agree to the transfer of sole control of the corporation to the president. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

There is no requirement under O.C.G.A. § 14-2-940 and O.C.G.A. § 14-2-941 that all elements of fraud must exist before relief can be granted; O.C.G.A. § 14-2-940 explicitly states that relief may be sought where a corporate director has acted in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

President's claim that a finding that the president fraudulently concealed information from a shareholder was improper was rejected as a finding of fraud was not required to rescind the issuance of shares to the president under O.C.G.A. § 14-2-940 and O.C.G.A. § 14-2-941. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

Fraud not established. — Trial court erred in denying a corporation's motion for summary judgment on an employee's claim seeking the removal of directors and officers pursuant to O.C.G.A. § 14-2-941 because the employee failed to carry the burden on summary judgment of coming forward with rebuttal evidence to demonstrate the existence of a genuine issue of fact on the employee's claim of fraud; the employee did not point to specific evidence showing that the corporation falsely reported income and did so with knowledge that the report was false. VanRan Communs. Servs. v. Vanderford, 313 Ga. App. 497, 722 S.E.2d 110 (2012).

Cited in Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746 (2005).

14-2-942. Extraordinary relief; share purchase.

RESEARCH REFERENCES

ALR. — Use of marketability discount in valuing closely held corporation or its stock, 16 ALR6th 693.

ARTICLE 10

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

PART 1

AMENDMENT OF ARTICLES OF INCORPORATION

14-2-1001. Authority to amend.

Law reviews. — For article, "Going Private Through Stock Reclassification," see 15 (No. 7) Ga. St. B.J. 14 (2010).

14-2-1003. Amendment by board of directors and shareholders.

(a) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

(1) The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that, because of conflicts of interest or other special circumstances, it should either refrain from making such a recommendation or recommend that the shareholders reject or vote against the amendment, in which case the board of directors shall transmit to the shareholders the basis for such determination; and

(2) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e) of this Code section.

(c) The board of directors may condition its submission of the proposed amendment, the effectiveness of the proposed amendment, or both on any basis.

(d) The corporation shall notify each shareholder entitled to vote of the proposed shareholders' meeting in accordance with Code Section 14-2-705. The notice of meeting must also state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless this chapter, the articles of incorporation, or the board of directors acting pursuant to subsection (c) of this Code section require a greater vote or a vote by voting groups, the amendment to be adopted

must be approved by a majority of the votes entitled to be cast on the amendment by each voting group entitled to vote on the amendment.

(f) At any time prior to the time the amendment becomes effective, notwithstanding authorization of the proposed amendment by the shareholders of the corporation, the board of directors may abandon such proposed amendment without further shareholder action. If the amendment is abandoned after articles of amendment have been filed with the Secretary of State but before the amendment has become effective, a statement that the amendment has been abandoned in accordance with this Code section executed on behalf of the corporation shall be delivered to the Secretary of State for filing prior to the effectiveness of the amendment. Upon filing, the statement shall take effect and the amendment shall be deemed abandoned and shall not become effective. (Code 1981, § 14-2-1003, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 17; Ga. L. 2006, p. 825, § 6/SB 469.)

The 2004 amendment, effective July 1, 2004, inserted ", the effectiveness of the proposed amendment, or both" in the middle of subsection (c); deleted a comma following "purpose" and "purposes" in the second sentence of subsection (d); deleted the parentheses near the beginning of subsection (e); and added subsection (f).

The 2006 amendment, effective July 1, 2006, substituted the present provisions of paragraph (b)(1) for the former provisions, which read: "The board of directors must recommend the amendment to the shareholders unless the board of directors elects, because of a conflict of interest or other special circumstances, to make no recommendation and communicates the basis for its election to the shareholders with the amendment; and".

COMMENT

Note to 2004 Amendment

The amendment to Code Section 14-2-1003(c) is modeled on Section 7-110-103(3) of the Colorado Business Corporation Act, which extends the authority granted the board of directors under Model Act Section 10.03(c) to condition a proposed amendment to the articles of incorporation beyond mere submission to the shareholders to the effectiveness of the amendment. The amendment to Code Section 14-2-1003(c) combines the Colorado Act and the Model Act concepts, so as to make clear that the board has the flexibility to make conditional both its submission of the amendment to the shareholders and effectiveness of that amendment.

New subsection (f) of Code Section 14-2-1003 is modeled on Section 242(c) of the General Corporation Law of the State of Delaware and is designed to grant the board of directors the same degree of flexibility with respect to amendments to the articles of incorporation as it has in cases of mergers and share exchanges under Code Section 14-2-1103(i) and sales or other disposals of assets requiring shareholder approval under Code Section 14-2-1202(f). In addition, in recognition of the board of director's ability under Code Section 14-2-123 to delay the effective time of a transaction beyond the filing of the effectuating document, new subsection (f) would permit the board of directors to abandon an amendment to the articles of incorporation already approved by the shareholders not only prior to the filing of the articles but also between the time of filing of such document and any delayed effective date specified therein. The language of this Code Section amendment is based on Model Act Section 11.08(b), added in 1999, although that provision

addresses mergers and share exchanges. A concurrent amendment to Code Section 14-2-1103 specifies a similar procedure with respect to the abandonment of mergers and share exchanges. *Cf.* Section 103(d) of the General Corporation Law of the State of Delaware, which specifies the procedures for terminating any type of transaction with respect to which a document specifying a future effective date or time has been filed with the secretary of state.

Note to 2006 Amendment

The changes in subsection (b)(1) of Code Section 14-2-1003 clarify that the board of directors has the authority not only to withhold its recommendation of an amendment because of conflicts of interest or other special circumstances, but also to recommend that the shareholders reject or vote against such an amendment.

14-2-1008. Amendment pursuant to reorganization.

Reserved. Repealed by Ga. L. 2006, p. 825, § 7/SB 469, effective July 1, 2006.

Editor's notes. — This Code section was based on Code 1981, § 14-2-1008, enacted by Ga. L. 1988, p. 1070, § 1.

COMMENT

Note to 2006 Amendment

Code Section 14-2-1008 was repealed in light of the adoption of new Code Section 14-2-104. See comment to Section 14-2-104.

14-2-1009. Effect of amendment.

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

JUDICIAL DECISIONS

Sufficient evidence supported name change. — Trial court properly entered judgment in favor of a bank on the guaranties because sufficient evidence established that the bank had undergone a name change prior to the assignment of the note and guaranties via certified copies of a state filing establishing the name change, the assignment, the renewal note, and the change in terms. Patel v. Ameris Bank, 324 Ga. App. 227, 749 S.E.2d 809 (2013).

Part 2

Amendment of Bylaws

14-2-1020. Amendment by board of directors or shareholders.

(a) A corporation's board of directors may amend or repeal the corporation's bylaws or adopt new bylaws unless:

(1) The articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or in part; or

(2) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(b) A corporation's shareholders may amend or repeal the corporation's bylaws or adopt new bylaws even though the bylaws may also be amended or repealed by its board of directors; provided, however, that unless the articles of incorporation provide otherwise, the shareholders may not amend (but may repeal) a bylaw adopted by the board of directors pursuant to subsection (a) of Code Section 14-2-728 or adopt a bylaw changing the plurality standard for the election of directors set forth in such subsection.

(c) A bylaw establishing staggered terms for directors may only be adopted, amended, or repealed by the shareholders.

(d) A bylaw limiting the authority of the board of directors may only be adopted pursuant to an agreement meeting the requirements of Code Section 14-2-732.

(e) Bylaws adopted by the incorporators or board of directors prior to the issuance of any of the corporation's shares may be amended by the incorporators or the board of directors prior to the issuance of any of the corporation's shares. (Code 1981, § 14-2-1020, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1993, p. 1231, § 12; Ga. L. 2000, p. 1567, § 9; Ga. L. 2008, p. 253, § 5/SB 436.)

The 2008 amendment, effective July 1, 2008, added the proviso at the end of subsection (b).

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008).

COMMENT

Note to 2008 Amendment

The 2008 amendment to subsection (a) of Code Section 14-2-728 allows the statutory default plurality rule for the election of directors to be altered by the board of directors of a publicly traded corporation in the bylaws. The 2008 amendment to subsection (b) of Code Section 14-2-1020 provides that, unless the articles of incorporation provide otherwise, the shareholders may not amend a bylaw adopted pursuant to subsection (a) of Code Section 14-2-728 or adopt a bylaw changing the plurality standard for the election of directors set forth in such subsection. The shareholders retain the power to repeal such a bylaw.

14-2-1021. Bylaw increasing quorum or voting requirement for shareholders.

(a) Except as provided in subsection (b) of Code Section 14-2-1020, a bylaw adopted by the shareholders may fix a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by this chapter. A bylaw in effect on July 1, 1989, fixing a greater quorum or voting requirement for shareholders (or voting

groups of shareholders) than is required by this chapter shall remain valid until amended or repealed as provided in subsection (b) of this Code section.

(b) Except as provided in Code Section 14-2-1020, 14-2-1113, or 14-2-1133, a bylaw adopted by the shareholders that fixes a greater quorum or voting requirement for shareholders under subsection (a) of this Code section shall not be adopted, amended, or repealed by the board of directors. (Code 1981, § 14-2-1021, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 48; Ga. L. 1990, p. 257, § 14; Ga. L. 1993, p. 1231, § 13; Ga. L. 2008, p. 253, § 6/SB 436.)

The 2008 amendment, effective July 1, 2008, in subsection (a), substituted "Except as provided in subsection (b) of Code Section 14-2-1020, a bylaw" for "A bylaw" at the beginning; and, in subsection (b), inserted "adopted by the shareholders" near the middle, and substituted "shall not" for "may not" near the end.

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008).

COMMENT

Note to 2008 Amendment

The 2008 amendment to subsection (a) of Code Section 14-2-1021 conforms this Code Section to subsection (b) of Code Section 14-2-1020, which provides that the shareholders may not adopt a bylaw changing the plurality standard for the election of directors set forth in subsection (a) of Code Section 14-2-728, unless the articles of incorporation provide otherwise.

ARTICLE 11

MERGER AND SHARE EXCHANGE

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Controlling Stockholder's Breach of Duty to Investigate Motive and Intent of Purchaser Before Selling Stock, 9 POF2d 261.

De Facto Merger of Two Corporations, 20 POF2d 609.

PART 1

MERGER AND SHARE EXCHANGE

14-2-1101. Merger.

(a) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required by Code Section 14-2-1103) approve a plan of merger.

(b) The plan of merger must set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(2) The terms and conditions of the merger; and

(3) The manner and basis of converting the shares of each corporation into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, and if any shares of any holder of a class or series of shares are to be converted in a manner or basis different from any other holder of shares of such class or series, the manner or basis applicable to each such holder.

(c) The plan of merger may set forth:

(1) Amendments to the articles of incorporation of the surviving corporation;

(2) A provision that the plan may be amended prior to the time the merger has become effective, but if shareholders of a corporation that is a party to the merger are required or permitted to vote on the plan, subsequent to approval of the plan by such shareholders the plan may not be amended to change in any respect not expressly authorized by such shareholders in connection with the approval of the plan:

(A) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received under the plan by the shareholders of any party to the merger if such change would adversely affect such shareholders;

(B) The articles of incorporation of any corporation that will survive as a result of the merger, except for changes permitted by Code Section 14-2-1002 or changes that would not adversely affect such shareholders; or

(C) Any of the other terms or conditions of the plan if such change would adversely affect such shareholders in any material respect; and

in the event that the plan of merger is amended after articles or a certificate of merger has been filed with the Secretary of State but before the merger has become effective, a certificate of amendment of merger executed on behalf of each party to the merger by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the merger; and

(3) Other provisions relating to the merger.

(d) Any of the terms of the plan of merger may be made dependent upon facts ascertainable outside of the plan of merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the plan of merger. As used in this subsection, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. (Code 1981, § 14-2-1101, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2003, p. 897, § 6; Ga. L. 2006, p. 825, § 8/SB 469.)

The 2006 amendment, effective July 1, 2006, substituted the present provisions of paragraph (b)(3) for the former provisions, which read: "The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or in part."; and in subsection (c), deleted "and" at the end of paragraph (c)(1), added new paragraph (c)(2), and redesignated former paragraph (c)(2) as present paragraph (c)(3).

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

COMMENT

Note to 2006 Amendment

The amendments to subsection (b)(3) of Code Section 14-2-1101, subsection (b)(3) of Code Section 14-2-1102, subsection (b)(2) of Code Section 14-2-1104 and clause (C) of subsection (d)(1) of Code Section 14-2-1109 clarify existing law by expressly recognizing the possibility of different treatment of shareholders in a plan of merger or share exchange (i.e., that some of the holders of a single class of shares or series of shares may be required to accept securities or properties while the remaining holders of such class or series may be compelled to accept different securities, property, or cash). The amendments require that where holders of the same class or series of shares are to be treated differently in a plan of merger or exchange, the plan of merger or exchange must set forth the manner and basis for the conversion of shares of each class or series or group of shareholders who are to be treated differently.

In order to provide additional protection to shareholders who may be treated differently in a plan of merger or exchange, new clause (B) of subsection (d)(1) of Code Section 14-2-1302 would exclude such shareholders from the "market exception" of Code Section 14-2-1302, which eliminates dissenters rights for transactions involving the issuance of shares of a public corporation to shareholders of a publicly held Georgia corporation.

New subsection (c)(2) of Code Section 14-2-1101, which is drawn from Sections 11.02(e) and 11.03(e) of the Model Business Corporation Act and Section 251(d) of the General Corporation Law of the State of Delaware, confirms and clarifies a corporation's authority to include provisions in plan of merger that would permit a corporation to amend the plan in certain respects subsequent to shareholder approval. Comparable provisions with conforming changes are included in amendments to Code Sections 14-2-1102 (Share exchange) and 14-2-1109 (Merger with other entities).

The amendments to these provisions are generally designed to permit amendments to agreements of merger or share exchange after the shareholders have approved such an agreement and prior to the effective time of such a merger or share exchange. These amendments specifically do not permit such a change in the amount and kind of consideration to received in the merger or share exchange or in

the terms of the articles of incorporation (or comparable governing document) of the surviving corporation (or other entity) to the extent such change would adversely affect the shareholder recipients without express prior authorization of the shareholders. In addition, no alteration or change in the terms and condition of the merger or share exchange would be permitted without express prior authorization of the shareholders if it would adversely affect the shareholders who have already voted on the agreement in any material respect.

Amendments to a plan of merger or share exchange made after the articles or a certificate of merger are filed but prior to the effective time of such merger or share exchange require that a certificate of amendment be delivered to the Secretary of State of the State of Georgia for filing prior to the effectiveness of the merger or share exchange.

14-2-1102. Share exchange.

(a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation through a share exchange if the board of directors of each corporation adopts and its shareholders (if required by Code Section 14-2-1103) approve the share exchange.

(b) The plan of share exchange must set forth:

(1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) The terms and conditions of the share exchange; and

(3) The manner and basis of exchanging the shares to be acquired for shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, and if any shares of any holder of a class or series of shares are to be exchanged in a manner or basis different from any other holder of shares of such class or series, the manner or basis applicable to each such holder.

(c) The plan of share exchange may set forth other provisions relating to the share exchange, including a provision that the plan may be amended prior to the time the share exchange has become effective, but if shareholders of a corporation that is a party to the share exchange are required or permitted to vote on the plan, subsequent to approval of the plan by such shareholders the plan may not be amended to change in any respect not expressly authorized by such shareholders in connection with the approval of the plan:

(1) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received under the plan by the shareholders of any party to the share exchange if such change would adversely affect such shareholders; or

(2) Any of the other terms or conditions of the plan if such change would adversely affect such shareholders in any material respect; and

in the event that the plan of share exchange is amended after articles or a certificate of share exchange has been filed with the Secretary of State but before the share exchange has become effective, a certificate of amendment of share exchange executed on behalf of each party to the share exchange by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the share exchange.

(d) Any of the terms of the plan of share exchange may be made dependent upon facts ascertainable outside of the plan of share exchange, provided that the manner in which such facts shall operate upon the terms of the share exchange is clearly and expressly set forth in the plan of share exchange. As used in this subsection, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(e) This Code section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange of shares or otherwise. (Code 1981, § 14-2-1102, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2003, p. 897, § 7; Ga. L. 2006, p. 825, § 9/SB 469.)

The 2006 amendment, effective July 1, 2006, in subsection (b), added "and" at the end of paragraph (b)(2), and substituted the present provisions of paragraph (b)(3) for the former provisions, which read: "The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or in part"; and in subsection (c), added the language beginning with ", including a provision" and ending with "approval of the plan:" in the introductory paragraph, and added paragraphs (c)(1) and (c)(2) and the undesignated text following (c)(2).

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

COMMENT

Note to 2006 Amendment

The amendments to subsection (b)(3) of Code Section 14-2-1102, which are consistent with the amendments to subsection (b)(3) of Code Section 14-2-1101, subsection (b)(2) of Code Section 14-2-1104 and clause (C) of subsection (d)(1) of Code Section 14-2-1109, are intended to clarify existing law by expressly recognizing the possibility of different treatment of shareholders in a plan of share exchange. See comment to Section 14-2-1101.

The amendments to subsection (c) of Code Section 14-2-1102, which are consistent with new subsection (c)(2) of Code Section 14-2-1101, confirms and clarifies a corporation's authority to include provisions in plan of share exchange that would permit a corporation to amend the plan in certain respects subsequent to shareholder approval. See comment to Section 14-2-1101.

14-2-1103. Action on plan.

(a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger and the board of directors of the corporation whose shares will be acquired in the share exchange shall submit the plan of merger (except as provided in subsection (h) of this Code section) or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

(1) The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that, because of conflicts of interest or other special circumstances, it should either refrain from making such a recommendation or recommend that the shareholders reject or vote against the plan, in which case the board of directors shall transmit to the shareholders the basis for such determination; and

(2) The shareholders entitled to vote must approve the plan as provided in subsections (e), (f), and (g) of this Code section.

(c) The board of directors may condition its submission of the proposed merger or share exchange, the effectiveness of the proposed merger or share exchange, or both on any basis.

(d) The corporation shall notify each shareholder entitled to vote of the proposed shareholders' meeting in accordance with Code Section 14-2-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation, the bylaws, or the board of directors (acting pursuant to subsection (c) of this Code section) requires a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by:

(1) A majority of all the votes entitled to be cast on the plan by all shares entitled to vote on the plan, voting as a single voting group; and

(2) A majority of all the votes entitled to be cast by holders of the shares of each voting group entitled to vote separately on the plan as a voting group by the articles of incorporation.

(f) Shares of a class or series not otherwise entitled to vote on the merger are entitled to vote on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of

incorporation, would require action by that class or series of shares voting as a separate voting group on the proposed amendment under Code Section 14-2-1004 as a part of the voting group described in paragraph (1) of subsection (e) of this Code section.

(g) Shares of a class or series included in a share exchange but not otherwise entitled to vote on the plan of share exchange are entitled to vote, with each class or series constituting a separate voting group.

(h) Action by the shareholders of the surviving corporation on a plan of merger or by the shareholders of the acquiring corporation in a share exchange is not required if:

(1) The articles of incorporation of the surviving or acquiring corporation will not differ (except for amendments enumerated in Code Section 14-2-1002) from its articles before the merger or share exchange;

(2) Each share of stock of the surviving or acquiring corporation outstanding immediately before the effective date of the merger or share exchange is to be an identical outstanding or reacquired share immediately after the merger or share exchange; and

(3) The number and kind of shares outstanding immediately after the merger or share exchange, plus the number and kind of shares issuable as a result of the merger or share exchange and by the conversion of securities issued pursuant to the merger or share exchange or the exercise of rights and warrants issued pursuant to the merger or share exchange, will not exceed the total number and kind of shares of the surviving or acquiring corporation authorized by its articles of incorporation immediately before the merger or share exchange.

(i) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation that is a party to a merger or share exchange is organized or by which it is governed, after a merger or share exchange is authorized, and at any time before articles of merger or a certificate of merger or share exchange becomes effective, the plan of merger or share exchange may be abandoned subject to any contractual rights without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors and otherwise in accordance with subsection (j) of this Code section.

(j) If a merger or share exchange is abandoned as permitted by subsection (i) of this Code section after articles or a certificate of merger or share exchange has been filed with the Secretary of State but before the merger or share exchange has become effective, a statement that

the merger or share exchange has been abandoned in accordance with this Code section executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective. (Code 1981, § 14-2-1103, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 49; Ga. L. 1993, p. 1231, § 14; Ga. L. 1996, p. 1203, § 7; Ga. L. 1997, p. 1165, § 10; Ga. L. 2004, p. 508, § 18; Ga. L. 2006, p. 825, § 10/SB 469.)

The 2004 amendment, effective July 1, 2004, inserted ", the effectiveness of the proposed merger or share exchange, or both" in subsection (c); substituted the present provisions of subsection (i) for the former provisions which read: "After a merger or share exchange is authorized, and at any time before articles of merger or a certificate of merger or share exchange is filed, the planned merger or share exchange may be abandoned (subject to any contractual rights) without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors."; and added subsection (j).

The 2006 amendment, effective July 1, 2006, substituted the present provisions of paragraph (b)(1) for the former provisions, which read: "The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors elects, because of conflict of interest or other special circumstances, to make no recommendation and communicates the basis for its election to the shareholders with the plan; and".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "after" was inserted following "governed," in subsection (i).

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

COMMENT

Note to 2004 Amendment

The amendment to Code Section 14-2-1103(c) is modeled on Section 7-111-103(3) of the Colorado Business Corporation Act, which extends the authority of the board of directors provided under the 1999 amendments to Model Act Section 11.04(c) (formerly Section 11.03[c]) to condition a plan of merger or share exchange beyond mere submission to the shareholders to the effectiveness of the plan. The amendment to subsection (c) combines the Colorado Act and the Model Act concepts, such that the board will now have the flexibility to make conditional its submission of the plan to the shareholders and the effectiveness of that plan.

The reference to the laws governing a foreign constituent corporation to a merger or share exchange in the amendment to Code Section 14-2-1103(i) is based on Model Act Section 11.08(a), added in 1999, and is made in recognition that either the plan of merger or share exchange itself or, in the case of such a transaction involving a Georgia corporation and a foreign corporation, the organic law of the foreign corporation, may prohibit the abandonment of the plan of merger or share exchange once a shareholder approval is obtained in accordance with that law.

The amendment to Code Section 14-2-1103(i) permits the board of directors to abandon a plan of merger or share exchange not only prior to filing but between filing and a specified future effective date and contains a cross-reference to new subsection (j), which sets forth the procedure to effect a post-filing abandonment.

New subsection (j) of Code Section 14-2-1103 is modeled on Model Act Section 11.08(b), added in 1999. It sets forth the procedures for the board of directors to follow in order to abandon a merger or share exchange with respect to which articles or a certificate has been filed but which, pursuant to the authority granted in Code Section 14-2-123, specified a delayed effective date. A concurrent amendment to Code Section 14-2-1003 specifies a similar procedure for the abandonment of articles of amendment to the articles of incorporation.

Note to 2006 Amendment

The changes in subsection (b)(1) of Code Section 14-2-1103 clarify that the board of directors has the authority not only to withhold its recommendation of a plan of merger or share exchange because of conflicts of interest or other special circumstances, but also to recommend that the shareholders reject or vote against such a plan. See comment to Section 14-2-1101(c)(2).

14-2-1104. Merger with subsidiary.

(a) A parent corporation that owns at least 90 percent of the outstanding shares of each class and series of a subsidiary corporation may merge the subsidiary into itself or into another such subsidiary or merge itself into the subsidiary without the approval of the board of directors or shareholders of the subsidiary.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

(1) The names of the parent and subsidiary; and

(2) The manner and basis of converting the shares of the parent or subsidiary into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination thereof, and if any shares of any holder of a class or series of shares are to be converted in a manner or basis different from any other holder of shares of such class or series, the manner or basis applicable to such holder.

(c) If, as provided under subsection (a) of this Code section, approval of a merger by the subsidiary's shareholders is not required, the surviving corporation shall, within ten days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(d) Except as provided in subsections (a), (b), and (c) of this Code section, a merger between a parent and a subsidiary shall be governed by the provisions of Article 11 of this chapter applicable to mergers generally.

(e) Any of the terms of the plan of merger may be made dependent upon facts ascertainable outside of the plan of merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the plan of merger. As used in this subsection, the term "facts" includes, but is not limited to, the occur-

rence of any event, including a determination or action by any person or body, including the corporation. (Code 1981, § 14-2-1104, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1999, p. 405, § 8; Ga. L. 2003, p. 897, § 8; Ga. L. 2006, p. 825, § 11/SB 469.)

The 2006 amendment, effective July 1, 2006, substituted the present provisions of paragraph (b)(2) for the former provisions, which read: "The manner and basis of converting the shares of the parent or subsidiary into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or in part."

COMMENT

Note to 2006 Amendment

The amendments to subsection (b)(2) of Code Section 14-2-1104, which are consistent with the amendments to subsection (b)(3) of Code Section 14-2-1101, subsection (b)(3) of Code Section 14-2-1102 and clause (C) of subsection (d)(1) of Code Section 14-2-1109, are intended to clarify existing law by expressly recognizing the possibility of different treatment of shareholders in a plan of merger with a subsidiary. See comment to Section 14-2-1101.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Liability of Parent Corporation for Acts of Subsidiary, 16 POF2d 679.

14-2-1106. Effect of merger or share exchange.

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007). For article, "2013 Georgia Corporation and Business Organization Case Law Developments," see 19 Ga. St. B.J. 28 (April 2014).

JUDICIAL DECISIONS

Name of corporate defendant in legal proceeding.

In a suit brought by mortgagors against the mortgagor bank that was taken over by a successor bank, the appellate court erred in dismissing the successor bank's appeal under O.C.G.A. § 9-11-25 for lack of standing based on the trial court's failure to add or substitute the bank as the defendant because the two corporations were deemed the same entity under federal and state law by virtue of their merger, thus, the claims originally filed by and against the mortgagee bank could continue. Nat'l City Mortg. Co. v. Tidwell, 293 Ga. 697, 749 S.E.2d 730 (2013).

Cited in Holmes v. Clear Channel Outdoor, Inc., 284 Ga. App. 474, 644 S.E.2d 311 (2007).

14-2-1109. Merger with other entities.

(a) As used in this Code section, the term:

(1) "Entity" includes any domestic or foreign nonprofit corporation, domestic or foreign limited liability company, domestic or foreign joint stock association, or domestic or foreign limited partnership.

(2) "Governing agreements" includes the articles of incorporation and bylaws of a corporation or nonprofit corporation, articles of association or trust agreement or indenture and bylaws of a joint stock association, articles of organization and operating agreement of a limited liability company, and the certificate of limited partnership and limited partnership agreement of a limited partnership, and agreements serving comparable purposes under the laws of other states or jurisdictions.

(3) "Joint-stock association" includes any association of the kind commonly known as a joint-stock association or joint-stock company and any unincorporated association, trust, or enterprise having members or having outstanding shares of stock or other evidences of financial and beneficial interest therein, whether formed by agreement or under statutory authority or otherwise, but shall not include a corporation, partnership, limited liability partnership, limited liability company, or nonprofit organization. A joint-stock association as defined in this paragraph may be one formed under the laws of this state, including a trust created pursuant to Article 2 of Chapter 12 of Title 53, or one formed under or pursuant to the laws of any other state or jurisdiction.

(4) "Limited liability company" includes limited liability companies formed under the laws of this state or of any other state or territory or the District of Columbia, unless the laws of such other state or jurisdiction forbid the merger of a limited liability company with a corporation.

(5) "Limited partnership" includes limited partnerships formed under the laws of this state or of any other state or territory or the District of Columbia, unless the laws of such other state or jurisdiction forbid the merger of a limited partnership with a corporation.

(6) "Nonprofit corporation" includes corporations which may make no distributions to their members, directors, or officers, except as reasonable compensation for services rendered, and except as otherwise provided by law, formed under the laws of this state or of any other state or territory or the District of Columbia, unless the laws of such other state or jurisdiction forbid the merger of a nonprofit corporation with a corporation formed under a general corporation law.

(7) "Share" includes shares, memberships, financial or beneficial interests, units, or proprietary or partnership interests in a limited liability company, joint-stock association or a limited partnership, but does not include debt obligations of any entity.

(8) "Shareholder" includes every member of a limited liability company or a joint-stock association that is a party to a merger or holder of a share of stock or other evidence of financial or beneficial interest therein.

(b) Any one or more domestic corporations may merge with one or more entities, except an entity formed under the laws of a state or jurisdiction which forbids a merger with a corporation. The corporation or corporations and one or more entities may merge into a single corporation or other entity, which may be any one of the constituent corporations or entities.

(c) The board of directors of each merging corporation and the appropriate body of each entity, in accordance with its governing agreements and the laws of the state or jurisdiction under which it was formed, shall adopt a plan of merger in accordance with each corporation's and entity's governing agreements and the laws of the state or jurisdiction under which it was formed, as the case may be.

(d) The plan of merger:

(1) Must set forth:

(A) The name of each corporation and entity planning to merge and the name of the surviving corporation or entity into which each other corporation and entity plans to merge;

(B) The terms and conditions of the merger; and

(C) The manner and basis of converting the shares of each corporation and the shares, memberships, or financial or beneficial interests or units in each of the entities into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, and if any shares of any holder of a class or series of shares are to be converted in a manner or basis different from any other holder of shares of such class or series, the manner or basis applicable to each such holder; and

(2) May set forth:

(A) Amendments to the articles of incorporation or governing agreements of the surviving corporation or entity;

(B) A provision that the plan may be amended prior to the time the merger has become effective, but if shareholders of a domestic corporation that is a party to the merger or shareholders, partners, or members of a domestic entity that is a party to the merger are required or permitted to vote on the plan, subsequent to approval of the plan by such shareholders, partners, or members the plan may not be amended to change in any respect not expressly

authorized by such approving shareholders, partners, or members in connection with the approval of the plan:

(i) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received under the plan by the shareholders, partners, or members of any party to the merger if such change would adversely affect such approving shareholders, partners, or members;

(ii) The articles or certificate of incorporation of any domestic or foreign corporation, or the governing agreements of any other entity, that will survive or be created as a result of the merger, except for changes permitted by Code Section 14-2-1002 or by comparable provisions of the law of the state or jurisdiction under which any such other entity was organized or changes that would not adversely affect such approving shareholders, partners, or members; or

(iii) Any of the other terms or conditions of the plan if such change would adversely affect such approving shareholders, partners, or members in any material respect; and

in the event that the plan of merger is amended after articles or a certificate of merger has been filed with the Secretary of State but before the merger has become effective, a certificate of amendment of merger executed on behalf of each party to the merger by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the merger; and

(C) Other provisions relating to the merger.

(e) Any of the terms of the plan of merger may be made dependent upon facts ascertainable outside of the plan of merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the plan of merger. As used in this subsection, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(f) For a plan of merger to be approved, the board of directors of each merging corporation must recommend the plan of merger to the shareholders in the same manner and to the same extent as provided in Code Section 14-2-1103. In the case of any other entity, the plan of merger shall be approved in the manner required by its governing agreements and in compliance with any applicable laws of the state or jurisdiction under which it was formed. In addition, each of the corporations shall comply with all other Code sections of this chapter

which relate to the merger of domestic corporations. Each other entity shall comply with all other provisions of its governing agreements and all provisions of the laws, if any, of the state or jurisdiction in which it was formed which relate to the merger.

(g) Each merging corporation shall comply with the requirements of Code Section 14-2-1105. (Code 1981, § 14-2-1109, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 51; Ga. L. 1991, p. 810, § 6; Ga. L. 1996, p. 1203, § 8; Ga. L. 1997, p. 143, § 14; Ga. L. 2003, p. 897, § 10; Ga. L. 2006, p. 825, § 12/SB 469; Ga. L. 2010, p. 579, § 8/SB 131.)

The 2006 amendment, effective July 1, 2006, substituted the present provisions of subparagraph (d)(1)(C) for the former provisions, which read: "The manner and basis of converting the shares of each corporation and the shares, memberships, or financial or beneficial interests or units in each of the entities into shares, obligations, or other securities of the surviving or any other corporation or entity or into cash or other property in whole or in part"; deleted "and" at the end of subparagraph (d)(2)(A); added new subparagraph (d)(2)(B); and redesignated former subparagraph (d)(2)(B) as present subparagraph (d)(2)(C).

The 2010 amendment, effective July 1, 2010, in paragraph (a)(3), substituted "shall not" for "does not" near the end of the first sentence and substituted "Article 2" for "Article 3" in the middle of the second sentence.

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

COMMENT

Note to 2006 Amendment

The amendments to clause (C) of subsection (d)(1) of Code Section 14-2-1109, which are consistent with the amendments to subsection (b)(3) of Code Section 14-2-1101, subsection (b)(3) of Code Section 14-2-1102, and subsection (b)(2) of Code Section 14-2-1104, are intended to clarify existing law by expressly recognizing the possibility of different treatment of shareholders in a plan of merger with an entity other than a domestic corporation. See comment to Section 14-2-1101.

New clause (B) of subsection (d)(2) Code Section 14-2-1109, which is consistent with the amendments to subsection (c)(2) of Code Section 14-2-1101 and subsection (c) of Code Section 14-2-1102, confirms and clarifies a corporation's authority to include provisions in plan of merger with an entity other than a Georgia corporation that would permit a corporation to amend the plan in certain respects subsequent to shareholder approval. See comment to Section 14-2-1101.

14-2-1109.1. Conversion to limited liability company or limited partnership.

(a) As used in this Code section, the term:

(1) "Limited liability company" means any limited liability company formed under Chapter 11 of this title.

(2) "Limited partnership" means any limited partnership formed under Chapter 9 of this title.

(b) Pursuant to Code Section 14-11-212 or 14-9-206.2 and this Code section, a corporation may elect to become a limited liability company or

limited partnership if the board of directors adopts and its shareholders approve a plan of conversion.

(c) The plan of conversion must set forth:

(1) The name of the limited liability company or limited partnership to be formed pursuant to such election;

(2) The manner and basis of converting the shares of such corporation into interests as members of the limited liability company to be formed pursuant to such election or interests as partners of the limited partnership to be formed pursuant to such election or a statement that such information is contained in the written operating agreement proposed for such limited liability company or the written limited partnership agreement proposed for such limited partnership;

(3) The effective date and time of such election, if later than the date and time the certificate of conversion is filed;

(4) The contents of the articles of organization that shall be the articles of organization of the limited liability company to be formed pursuant to such election unless and until modified in accordance with the provisions of Chapter 11 of this title or the contents of the certificate of limited partnership that shall be the certificate of limited partnership of the limited partnership to be formed pursuant to such election unless and until modified in accordance with the provisions of Chapter 9 of this title; and

(5)(A) The contents of the written operating agreement to be entered into among the persons who will be the members of the limited liability company to be formed pursuant to such election, which shall, if not separately provided in the plan of election, state:

(i) The manner and basis for the conversion of the shares of such corporation into interests as members of the limited liability company to be formed pursuant to such election; and

(ii) That approval of the election will be deemed to be execution of the operating agreement by such persons; or

(B) The contents of the written limited partnership agreement to be entered into among the persons who will be the partners of the limited partnership to be formed pursuant to such election, which shall, if not separately provided in the plan of conversion, state:

(i) The manner and basis for the conversion of the shares of such corporation into interests as partners of the limited partnership to be formed pursuant to such conversion; and

(ii) That approval of the election will be deemed to be execution of the limited partnership agreement by such persons.

(d) For a plan of conversion to become a limited liability company or limited partnership to be approved:

(1) The board of directors shall submit the plan of conversion approved by the shareholders and shall recommend the plan of conversion to the shareholders in the same manner and subject to the same exceptions as provided in paragraph (1) of subsection (b) of Code Section 14-2-1103, and may condition its submission and provide notice to each shareholder entitled to vote in the same manner as provided in subsections (c) and (d) of Code Section 14-2-1103; and

(2) All of the shareholders must approve the plan of conversion.

(e) The plan of conversion may set forth other provisions relating to the conversion, including a provision that the plan may be amended prior to the time that the conversion has become effective, but subsequent to approval of the plan by shareholders the plan may not be amended to change in any respect not expressly authorized by such shareholders in connection with the approval of the plan:

(1) The amount or kind of interests, shares or other securities, obligations, or rights to acquire interests, shares or other securities to be received under the plan by the shareholders if the change would adversely affect such shareholders; or

(2) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect; and

in the event that the plan of conversion is amended after a certificate of conversion has been filed with the Secretary of State but before the conversion has become effective, a certificate of amendment of conversion executed by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the conversion.

(f) Any of the terms of the plan of conversion may be made dependent upon facts ascertainable outside of the plan of conversion, provided that the manner in which such facts shall operate upon the terms of the conversion is clearly and expressly set forth in the plan of conversion. As used in this subsection, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(g) After a conversion is authorized, unless the plan of conversion provides otherwise, and at any time before the conversion has become effective, the planned conversion may be abandoned, subject to any

contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, in the manner determined by the board of directors.

(h) After a plan of conversion is approved by the shareholders, the corporation shall deliver to the Secretary of State for filing a certificate of conversion complying with subsection (b) of Code Section 14-11-212 or subsection (b) of Code Section 14-9-206.2, as applicable. (Code 1981, § 14-2-1109.1, enacted by Ga. L. 1993, p. 123, § 2; Ga. L. 2006, p. 825, § 13/SB 469.)

The 2006 amendment, effective July 1, 2006, rewrote this Code section.

COMMENT

Note to 2006 Amendment

Code Section 14-2-1109.1, which permits a Georgia business corporation to convert to a Georgia limited liability company, was added to this chapter effective March 1, 1994, the effective date of Code Section 14-11-212, which is the provision of the Georgia Limited liability Company Act authorizing the conversion of a corporation, limited partnership or general partnership organized under the laws of Georgia into a Georgia limited liability company. Effective July 1, 1997, the Georgia Revised Uniform Limited Partnership was amended to add new Section 14-9-206.2, which authorizes the conversion of a corporation, limited liability company or general partnership organized under the laws of Georgia into a Georgia limited partnership. The amendments to Code Section 14-2-1109.1, which were adopted for purposes of conformity with Section 14-9-206.2, expressly authorize the conversion of a Georgia business corporation into a Georgia limited partnership, specify the contents of a plan of conversion, and establish the procedural rules for the adoption and approval thereof.

The changes to subsection (d) conform to amendments in subsection (b) and (c) of Code Section 14-2-1103. New subsection (e) was added for purposes of conformity with amendments to subsections (c)(2) of Code Section 14-2-1101, subsection (c) of Code Section 14-2-1102, and new clause (B) of subsection (d)(2) of Code Section 14-2-1109. New subsection (f) was added for purposes of conformity with subsection (d) of Code Section 14-2-1101 and subsection (d) of Code Section 14-2-1102. New subsection (g) was added for purposes of conformity of Code Section 14-2-1103(i).

14-2-1109.2. Election to become corporation.

(a) A foreign corporation, domestic limited partnership, foreign limited partnership, domestic general partnership, foreign general partnership, domestic limited liability company, or foreign limited liability company may elect to become a corporation. Such election shall require the approval of all of the electing entity's partners, members, or shareholders, or such other approval or compliance as may be sufficient under applicable law or the governing documents of the electing entity to authorize such election.

(b) Such election shall be made by delivering a certificate of conversion to the Secretary of State for filing. The certificate shall set forth:

(1) The name and jurisdiction of organization of the entity making the election;

(2) That the entity elects to become a corporation;

(3) The effective date, or the effective date and time, of such conversion if later than the date and time the certificate of conversion is filed;

(4) That the election has been approved as required by subsection (a) of this Code section;

(5) That filed with the certificate of conversion are articles of incorporation that are in the form required by Code Section 14-2-202, setting forth a name for the corporation that satisfies the requirements of Code Section 14-2-401, and stating that such articles of incorporation shall be the articles of incorporation of the corporation formed pursuant to such election unless and until modified in accordance with this chapter; and

(6) If not provided for in the articles of incorporation required by paragraph (5) of this subsection, a statement setting forth the manner and basis for converting the ownership interests in the entity making the election into shares of the corporation formed pursuant to such election.

(c) Upon the election becoming effective:

(1) The electing entity shall become a corporation formed under this chapter by such election, except that the existence of the corporation so formed shall be deemed to have commenced on the date the entity making the election commenced its existence in the jurisdiction in which such entity was first created, formed, incorporated, or otherwise came into being;

(2) The ownership interests in the entity making the conversion shall be converted on the basis stated or referred to in the certificate of conversion in accordance with paragraph (6) of subsection (b) of this Code section;

(3) The articles of incorporation filed with the certificate of conversion shall be the articles of incorporation of the corporation formed pursuant to such election unless and until amended in accordance with this chapter;

(4) The governing documents of the entity making the election shall be of no further force or effect;

(5) The corporation formed by such election shall thereupon and thereafter possess all of the rights, privileges, immunities, franchises, and powers of the entity making the election; all property,

real, personal, and mixed, all contract rights, and all debts due to such entity, as well as all other choses in action, and each and every other interest of or belonging to or due to the entity making the election shall be taken and deemed to be vested in the corporation formed by such election without further act or deed; the title to any real estate, or any interest therein, vested in the entity making the election shall not revert or be in any way impaired by reason of such election; and none of such items shall be deemed to have been conveyed, transferred, or assigned by reason of such election for any purpose; and

(6) The corporation formed by such election shall thereupon and thereafter be responsible and liable for all the liabilities and obligations of the entity making the election, and any claim existing or action or proceeding pending by or against such entity may be prosecuted as if such election had not become effective. Neither the rights of creditors nor any liens upon the property of the entity making such election shall be impaired by such election.

(d) A conversion pursuant to this Code section shall not be deemed to constitute a dissolution of the entity making the election and shall constitute a continuation of the existence of the entity making the election in the form of a corporation. A corporation formed by an election pursuant to this Code section shall for all purposes be deemed to be the same entity as the entity making such election.

(e) A corporation formed by an election pursuant to this Code section may file a copy of such certificate of conversion, certified by the Secretary of State, in the office of the clerk of the superior court of the county where any real property owned by such corporation is located and record such certified copy of the certificate of conversion in the books kept by such clerk for recordation of deeds in such county with the entity electing to become a corporation indexed as the grantor and the corporation indexed as the grantee. No real estate transfer tax under Code Section 48-6-1 shall be due with respect to the recordation of such election. (Code 1981, § 14-2-1109.2, enacted by Ga. L. 2006, p. 825, § 14/SB 469.)

Effective date. — This Code section became effective July 1, 2006.

COMMENT

Note to 2006 Amendment

New Code Section 14-2-1109.2 authorizes the conversion of a limited liability company, general partnership and limited partnership organized under the laws of Georgia, and a business corporation, limited liability company, general partnership and limited partnership organized under the laws of a jurisdiction other than Georgia, into a Georgia business corporation. Subsection (b) provides that such a conversion is to be effectuated by delivery of a certificate of conversion to the

Secretary of State. The effects and consequences of such an election to convert are specified in subsection (c), which provides, among other things, that while the electing entity shall become a Georgia business corporation, the existence of the corporation so formed shall be deemed to have commenced on the date that the entity making such election commenced its existence under the laws of the jurisdiction in which such entity was created, formed, incorporated, organized or otherwise came into being. Subsection (d) expressly provides that a conversion pursuant to Code Section 14-2-1109.2 shall not be deemed to constitute a dissolution of the entity making the election and that a corporation formed by an election to convert shall for all purposes be deemed to be the same entity as the entity making such election.

14-2-1109.3. Conversion to foreign limited liability company, foreign limited partnership, or foreign corporation, requirements.

(a) A corporation may elect to become a foreign limited liability company, a foreign limited partnership, or a foreign corporation, if such a conversion is permitted by the law of the state or jurisdiction under whose law the resulting entity would be formed.

(b) To effect a conversion under this Code section, the corporation must adopt a plan of conversion that sets forth the manner and basis of converting the shares of the corporation into interests, shares, obligations, or other securities, as the case may be, of the resulting entity. The plan of conversion may set forth other provisions relating to the conversion.

(c) For the plan of conversion to be adopted:

(1) The board of directors shall submit the plan of conversion for approval by the shareholders and shall recommend the plan of conversion to the shareholders in the same manner and subject to the same exceptions as provided in paragraph (1) of subsection (b) of Code Section 14-2-1103, and may condition its submission and provide notice to each shareholder entitled to vote in the same manner as provided in subsections (c) and (d) of Code Section 14-2-1103; and

(2) All of the shareholders must approve the plan of conversion.

(d) The plan of conversion may set forth other provisions relating to the conversion, including a provision that the plan may be amended prior to the time that the conversion has become effective, but subsequent to approval of the plan by shareholders the plan may not be amended to change in any respect not expressly authorized by such shareholders in connection with the approval of the plan:

(1) The amount or kind of interests, shares or other securities, obligations, or rights to acquire interests, shares or other securities to be received under the plan by the shareholders if the change would adversely affect such shareholders; or

(2) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect; and

in the event that the plan of conversion is amended after a certificate of conversion has been filed with the Secretary of State but before the conversion has become effective, a certificate of amendment of conversion executed by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the conversion.

(e) Any of the terms of the plan of conversion may be made dependent upon facts ascertainable outside of the plan of conversion, provided that the manner in which such facts shall operate upon the terms of the conversion is clearly and expressly set forth in the plan of conversion. As used in this subsection, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(f) After a conversion is authorized, unless the plan of conversion provides otherwise, and at any time before the conversion has become effective, the planned conversion may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, in the manner determined by the board of directors.

(g) The conversion shall be effected as provided in, and shall have the effects provided by, the law of the state or jurisdiction under whose law the resulting entity is formed and by the plan of conversion, to the extent not inconsistent with such law.

(h) If the resulting entity is required to obtain a certificate of authority to transact business in this state by the provisions of this title governing foreign corporations, foreign limited partnerships, or foreign limited liability companies, it shall do so pursuant to Code Section 14-2-1501, 14-9-902, or 14-11-705.

(i) After a plan of conversion is approved by the shareholders, the corporation shall deliver to the Secretary of State for filing a certificate of conversion setting forth:

(1) The name of the corporation;

(2) The name and jurisdiction of the entity to which the corporation shall be converted;

(3) The effective date, or the effective date and time, of such conversion if later than the date and time the certificate of conversion is filed;

(4) A statement that the plan of conversion has been adopted as required by subsection (c) of this Code section;

(5) A statement that the authority of its registered agent to accept service on its behalf is revoked as of the effective time of such conversion and that the Secretary of State is irrevocably appointed as the agent for service of process on the resulting entity in any proceeding to enforce an obligation of the corporation arising prior to the effective time of such conversion;

(6) A mailing address to which a copy of any process served on the Secretary of State under paragraph (5) of this subsection may be mailed as provided in subsection (j) of this Code section; and

(7) A statement that the Secretary of State shall be notified of any change in the resulting entity's mailing address.

(j) Upon the conversion's taking effect, the resulting entity is deemed to appoint the Secretary of State as its agent for service of process in a proceeding to enforce any of its obligations arising prior to the effective time of such conversion. Any party that serves process upon the Secretary of State in accordance with this subsection also shall mail a copy of the process to the chief executive officer, chief financial officer, or the secretary of the resulting entity, or a person holding a comparable position, at the mailing address provided in subsection (i) of this Code section.

(k) A converting corporation pursuant to this Code section may file a copy of its certificate of conversion, certified by the Secretary of State, in the office of the clerk of the superior court of the county where any real property owned by such corporation is located and record such certified copy of the certificate of conversion in the books kept by such clerk for recordation of deeds in such county with the corporation indexed as the grantor and the foreign entity indexed as the grantee. No real estate transfer tax otherwise required by Code Section 48-6-1 shall be due with respect to recordation of such certificate of conversion. (Code 1981, § 14-2-1109.3, enacted by Ga. L. 2006, p. 825, § 14/SB 469; Ga. L. 2007, p. 455, § 2/SB 234.)

Effective date. — This Code section became effective July 1, 2006.

The 2007 amendment, effective July 1, 2007, added subsections (i) through (k).

COMMENT

Note to 2006 Amendment

New Code Section 14-2-1109.3, which authorizes the conversion of a Georgia business corporation into a limited liability company, a limited partnership, or a corporation organized under the laws of a jurisdiction other than Georgia, generally specifies the contents of a plan of conversion and procedural rules for the adoption and approval thereof.

Note to 2007 Amendment

Under new subsection (i) of Code Section 14-2-1109.3, a corporation electing to become a foreign corporation, foreign limited liability company, or foreign limited partnership is now required to make such a change in form a matter of public

record by filing a certificate of conversion with the Secretary of State. Upon the effectiveness of such a conversion, the resulting entity is deemed to have appointed the Secretary of State as its agent for service of process in proceedings to enforce any of its obligations arising prior to the effective time of such conversion pursuant to new subsection (j). If such a converting corporation owns real estate in Georgia, it may file a certified copy of its certificate of conversion for recording in the office of the clerk of the superior court of any county in which such real property is located pursuant to the provisions of new subsection (k), which also clarifies that no Georgia real estate transfer tax shall be due with respect to recordation of such certificate of conversion.

Part 2

Fair Price Requirements

14-2-1110. Definitions.

As used in this part, the term:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a specified person.

(2) "Announcement date" means the date of the first general public announcement of the proposal of the business combination.

(3) "Associate," when used to indicate a relationship with any person, means:

(A) Any corporation or organization, other than the corporation or a subsidiary of the corporation, of which such person is an officer, director, or partner or is the beneficial owner of 10 percent or more of any class of equity securities;

(B) Any trust or other estate in which such person has a beneficial interest of 10 percent or more or as to which such person serves as trustee or in a similar fiduciary capacity; and

(C) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person.

(4) "Beneficial owner" means a person shall be considered to be the beneficial owner of any equity securities:

(A) Which such person or any of such person's affiliates or associates owns, directly or indirectly;

(B) Which such person or any of such person's affiliates or associates, directly or indirectly, has:

(i) The right to acquire, whether such right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding or upon the exercise

of conversion rights, exchange rights, warrants or options, or otherwise; or

(ii) The right to vote pursuant to any agreement, arrangement, or understanding; or

(C) Which are owned, directly or indirectly, by any other person with which such person or any of such person's affiliates or associates has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of equity securities; provided, however, that a person shall not be considered to be a beneficial owner of any equity securities which (i) have been tendered pursuant to a tender or exchange offer made by such person or such person's affiliates or associates until such tendered stock is accepted for purchase or exchange or (ii) such person or such person's affiliates or associates have the right to vote pursuant to any agreement, arrangement, or understanding if the agreement, arrangement, or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more persons.

(5) "Business combination" means:

(A) Any merger of the corporation or any subsidiary with:

(i) Any interested shareholder; or

(ii) Any other corporation, whether or not itself an interested shareholder, which is, or after the merger would be, an affiliate of an interested shareholder that was an interested shareholder prior to the consummation of the transaction;

(B) Any share exchange with (i) any interested shareholder or (ii) any other corporation, whether or not itself an interested shareholder, which is, or after the share exchange would be, an affiliate of an interested shareholder that was an interested shareholder prior to the consummation of the transaction;

(C) Any sale, lease, transfer, or other disposition, other than in the ordinary course of business, in one transaction or in a series of transactions in any 12 month period, to any interested shareholder or any affiliate of any interested shareholder, other than the corporation or any of its subsidiaries, of any assets of the corporation or any subsidiary having, measured at the time the transaction or transactions are approved by the board of directors of the corporation, an aggregate book value as of the end of the corporation's most recently ended fiscal quarter of 10 percent or more of the net assets of the corporation as of the end of such fiscal quarter;

(D) The issuance or transfer by the corporation, or any subsidiary, in one transaction or a series of transactions in any 12 month

period, of any equity securities of the corporation or any subsidiary which have an aggregate market value of 5 percent or more of the total market value of the outstanding common and preferred shares of the corporation whose shares are being issued to any interested shareholder or any affiliate of any interested shareholder, other than the corporation or any of its subsidiaries, except pursuant to the exercise of warrants or rights to purchase securities offered pro rata to all holders of the corporation's voting shares or any other method affording substantially proportionate treatment to the holders of voting shares;

(E) The adoption of any plan or proposal for the liquidation or dissolution of the corporation in which anything other than cash will be received by an interested shareholder or any affiliate of any interested shareholder; or

(F) Any reclassification of securities, including any reverse stock split, or recapitalization of the corporation, or any merger of the corporation with any of its subsidiaries, or any share exchange with any of its subsidiaries, which has the effect, directly or indirectly, in one transaction or a series of transactions in any 12 month period, of increasing by 5 percent or more the proportionate amount of the outstanding shares of any class or series of equity securities of the corporation or any subsidiary which is directly or indirectly beneficially owned by any interested shareholder or any affiliate of any interested shareholder.

(6) "Continuing director" means any member of the board of directors who is not an affiliate or associate of an interested shareholder or any of its affiliates, other than the corporation or any of its subsidiaries, and who was a director of the corporation prior to the determination date, and any successor to such continuing director who is not an affiliate or an associate of an interested shareholder or any of its affiliates, other than the corporation or its subsidiaries, and is recommended or elected by a majority of all of the continuing directors.

(7) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, and the beneficial ownership of shares representing 10 percent or more of the votes entitled to be cast by a corporation's voting shares shall create an irrebuttable presumption of control.

(8) "Corporation," in addition to the definition contained in Code Section 14-2-140, shall include any trust merging with a domestic corporation pursuant to Code Section 53-12-159.

(9) "Determination date" means the date on which an interested shareholder first became an interested shareholder.

(10) "Fair market value" means:

(A) In the case of securities, the highest closing sale price, during the period beginning with and including the determination date and for 29 days prior to such date, of such a security on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such securities are listed, or, if such securities are not listed on any such exchange, the highest closing sales price or, if none is available, the average of the highest bid and asked prices reported with respect to such a security, in each case during the 30 day period referred to above, on the National Association of Securities Dealers, Inc., Automatic Quotation System, or any system then in use, or, if no such quotations are available, the fair market value on the date in question of such a security as determined in good faith at a duly called meeting of the board of directors by a majority of all of the continuing directors, or, if there are no continuing directors, by the entire board of directors; and

(B) In the case of property other than securities, the fair market value of such property on the date in question as determined in good faith at a duly called meeting of the board of directors by a majority of all of the continuing directors, or, if there are no continuing directors, by the entire board of directors of the corporation.

(11) "Interested shareholder" means any person, other than the corporation or its subsidiaries, that:

(A) Is the beneficial owner of 10 percent or more of the voting power of the outstanding voting shares of the corporation; or

(B) Is an affiliate of the corporation and, at any time within the two-year period immediately prior to the date in question, was the beneficial owner of 10 percent or more of the voting power of the then outstanding voting shares of the corporation.

For the purpose of determining whether a person is an interested shareholder, the number of voting shares deemed to be outstanding shall not include any unissued voting shares which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

(12) "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation.

(13) "Voting shares" means shares entitled to vote generally in the election of directors. (Code 1981, § 14-2-1110, enacted by Ga. L. 1988,

p. 1070, § 1; Ga. L. 1989, p. 946, § 52; Ga. L. 1999, p. 405, § 9; Ga. L. 2010, p. 579, § 9/SB 131.)

The 2010 amendment, effective July 1, 2010, substituted "Code Section 53-12-159" for "Code Section 53-12-59" at the end of paragraph (8).

ARTICLE 12

SALE OF ASSETS

14-2-1202. Sale of assets requiring shareholder approval.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property (with or without the good will), otherwise than pursuant to Code Section 14-2-1201, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(b) For a transaction to be authorized:

(1) The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that, because of conflicts of interest or other special circumstances, it should either refrain from making such a recommendation or recommend that the shareholders reject or vote against the plan, in which case the board of directors shall transmit to the shareholders the basis for such determination; and

(2) The shareholders entitled to vote must approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction, the effectiveness of the proposed transaction, or both on any basis.

(d) The corporation shall notify each shareholder entitled to vote of the proposed shareholders' meeting in accordance with Code Section 14-2-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property of the corporation and contain or be accompanied by a description of the transaction.

(e) Unless the articles of incorporation, the bylaws, or the board of directors (acting pursuant to subsection (c) of this Code section) require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by a majority of all the votes entitled to be cast on the transaction.

(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.

(g) A transaction that constitutes a distribution is governed by Code Section 14-2-640 and not by this Code section. (Code 1981, § 14-2-1202, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1997, p. 1165, § 11; Ga. L. 2004, p. 508, § 19; Ga. L. 2006, p. 825, § 15/SB 469.)

The 2004 amendment, effective July 1, 2004, inserted ", the effectiveness of the proposed transaction, or both" in the middle of subsection (c).

The 2006 amendment, effective July 1, 2006, substituted the present provisions of paragraph (b)(1) for the former provisions, which read: "The board of directors must recommend the proposed transaction to the shareholders unless the board of directors elects, because of conflict of interest or other special circumstances, to make no recommendation and communicates the basis for its election to the shareholders with the submission of the proposed transaction; and".

COMMENT

Note to 2004 Amendment

The amendment to Code Section 14-2-1202(c) is modeled on Section 7-112-102(4) of the Colorado Business Corporation Act. It extends the authority of the board of directors under Model Act Section 12.02(c) to condition a proposal for the sale, lease, exchange or other disposal of all or substantially all the corporation's assets beyond mere submission to the shareholders to the effectiveness of the proposal. The amendment combines the Colorado Act and the Model Act concepts, such that the board will now have the flexibility to make conditional both its submission of the proposal to the shareholders and the effectiveness of that proposal.

Note to 2006 Amendment

The changes in subsection (b)(1) of Code Section 14-2-1202 clarify that the board of directors has the authority not only to withhold its recommendation of a disposition requiring shareholder approval because of conflicts of interest or other special circumstances, but also to recommend that the shareholders reject or vote against such a disposition.

ARTICLE 13

DISSENTERS' RIGHTS

PART 1

RIGHT TO DISSENT AND OBTAIN PAYMENT FOR SHARES

14-2-1301. Definitions.

Law reviews. — For article, "Going Private Through Stock Reclassification," see 15 (No. 7) Ga. St. B.J. 14 (2010).

14-2-1302. Right to dissent.

(a) A record shareholder of the corporation is entitled to dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party:

(A) If approval of the shareholders of the corporation is required for the merger by Code Section 14-2-1103 or the articles of incorporation and the shareholder is entitled to vote on the merger, unless:

(i) The corporation is merging into a subsidiary corporation pursuant to Code Section 14-2-1104;

(ii) Each shareholder of the corporation whose shares were outstanding immediately prior to the effective time of the merger shall receive a like number of shares of the surviving corporation, with designations, preferences, limitations, and relative rights identical to those previously held by each shareholder; and

(iii) The number and kind of shares of the surviving corporation outstanding immediately following the effective time of the merger, plus the number and kind of shares issuable as a result of the merger and by conversion of securities issued pursuant to the merger, shall not exceed the total number and kind of shares of the corporation authorized by its articles of incorporation immediately prior to the effective time of the merger; or

(B) If the corporation is a subsidiary that is merged with its parent under Code Section 14-2-1104;

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(3) Consummation of a sale or exchange of all or substantially all of the property of the corporation if a shareholder vote is required on the sale or exchange pursuant to Code Section 14-2-1202, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under Code Section 14-2-604; or

(5) Any corporate action taken pursuant to a shareholder vote to the extent that Article 9 of this chapter, the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) A shareholder entitled to dissent and obtain payment for his or her shares under this article may not challenge the corporate action creating his or her entitlement unless the corporate action fails to comply with procedural requirements of this chapter or the articles of incorporation or bylaws of the corporation or the vote required to obtain approval of the corporate action was obtained by fraudulent and deceptive means, regardless of whether the shareholder has exercised dissenter's rights.

(c) Notwithstanding any other provision of this article, there shall be no right of dissent in favor of the holder of shares of any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at a meeting at which a plan of merger or share exchange or a sale or exchange of property or an amendment of the articles of incorporation is to be acted on, were either listed on a national securities exchange or held of record by more than 2,000 shareholders, unless:

(1) In the case of a plan of merger or share exchange, any holders of shares of the class or series are required under the plan of merger or share exchange to accept for their shares:

(A) Anything except shares of the surviving corporation or another publicly held corporation which at the effective date of the merger or share exchange are either listed on a national securities exchange or held of record by more than 2,000 shareholders, except for scrip or cash payments in lieu of fractional shares; or

(B) Any shares of the surviving corporation or another publicly held corporation which at the effective date of the merger or share exchange are either listed on a national securities exchange or held of record by more than 2,000 shareholders that are different, in type or exchange ratio per share, from the shares to be provided or offered to any other holder of shares of the same class or series of shares in exchange for such shares; or

(2) The articles of incorporation or a resolution of the board of directors approving the transaction provides otherwise. (Code 1981, § 14-2-1302, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 58; Ga. L. 1999, p. 405, § 11; Ga. L. 2003, p. 897, § 11; Ga. L. 2006, p. 825, § 16/SB 469.)

The 2006 amendment, effective July 1, 2006, in paragraph (c)(1), substituted "any holders" for "the holders", added a colon following "accept for their shares", and designated the remainder of the previously existing provisions as subparagraph (c)(1)(A), in subparagraph (c)(1)(A), substituted "Anything" for "anything" at the beginning, and added subparagraph (c)(1)(B).

COMMENT

Note to 2006 Amendment

In order to provide additional protection to shareholders who may be treated differently in a plan of merger or exchange in accordance with the provisions of subsection (b)(3) of Code Section 14-2-1101, subsection (b)(3) of Code Section 14-2-1102, subsection (b)(2) of Code Section 14-2-1104 and clause (C) of subsection (d)(1) of Code Section 14-2-1109, new clause (B) of subsection (d)(1) of Code Section 14-2-1302 would exclude such shareholders from the "market exception" of Code Section 14-2-1302, which eliminates dissenters rights for transactions involving the issuance of shares of a public corporation to shareholders of a publicly held Georgia corporation. This new clause provides that a shareholder shall not be required by the terms of the plan of merger or exchange to accept any consideration that is different than the consideration to be provided to the holder of any other shares of the same class or series of shares held by that shareholder.

JUDICIAL DECISIONS

Exclusivity of remedy.

Appraisal remedy in O.C.G.A. § 14-2-1302(b) was the exclusive remedy when the dispute was essentially about the price of stock; where a stockholder did not show how the injuries were separate and apart from those of other shareholders, the shareholder was not allowed to bring suit for damages arising from a reverse stock split. Haskins v. Haskins, 278 Ga. App. 514, 629 S.E.2d 504 (2006).

Part 2

Procedure for Exercise of Dissenters' Rights

14-2-1325. Offer of payment.

Law reviews. — For article, "Business Associations," see 63 Mercer L. Rev. 83 (2011).

14-2-1327. Procedure if shareholder dissatisfied with payment or offer.

Law reviews. — For annual survey of cases discussing business associations, see 57 Mercer L. Rev. 49 (2005). For article, "Business Associations," see 63 Mercer L. Rev. 83 (2011).

JUDICIAL DECISIONS

Applicability. — Trial court erred by granting partial summary judgment to a doctor in a declaratory judgment action against the former clinic the doctor had worked for and was a shareholder of, because the trial court erroneously inter-

preted the professional corporation's bylaws as a restrictive covenant in restraint of trade when, in fact, the bylaws were not part of the doctor's employment contract and did not provide for a noncompetition penalty or forfeiture provision upon the doctor's departure. Albany Bone & Joint Clinic, P.C. v. Hajek, 272 Ga. App. 464, 612 S.E.2d 509 (2005).

ARTICLE 14

DISSOLUTION

Part 1

Voluntary Dissolution

14-2-1402. Dissolution by board of directors and shareholders.

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed dissolution, unless the board of directors makes the recommendation that because of conflicts of interest or other special circumstances, it should either refrain from making such a recommendation or recommend that the shareholders reject or vote against dissolution, in which case the board of directors shall transmit to the shareholders the basis for such determination; and

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e) of this Code section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder entitled to vote of the proposed shareholders' meeting in accordance with Code Section 14-2-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors (acting pursuant to subsection (c) of this Code section) requires a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal. (Code 1981, § 14-2-1402, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2006, p. 825, § 17/SB 469.)

The 2006 amendment, effective July 1, 2006, substituted the present provisions of paragraph (b)(1) for the former provisions, which read: "The board of directors must recommend dissolution to the shareholders unless the board of direc-

tors elects, because of a conflict of interest or other special circumstances, to make no recommendation and communicates the basis for its determination to the shareholders; and".

Editor's notes. — Ga. L. 2006, p. 825, purported to amend subsection (b), but actually amended paragraph (b)(1).

COMMENT

Note to 2006 Amendment

The changes in clause (1) of subsection (b) of Code Section 14-2-1402 clarify that the board of directors has the authority not only to withhold its recommendation of a proposed dissolution because of conflicts of interest or other special circumstances, but also to recommend that the shareholders reject or vote against such a dissolution.

14-2-1405. Effect of notice of intent to dissolve.

JUDICIAL DECISIONS

Ability to pursue litigation. — Trial court erred in denying the seller's motion to dismiss the dissolved corporation's renewal action, as that action was filed more than two years after the dissolved corporation was dissolved and applicable statutory law only gave the dissolved corporation two years from the time of dissolution to file suit, regardless of whether that suit was an original action or was a renewal action filed after the original action had been voluntarily dismissed. Deere & Co. v. JPS Dev., Inc., 264 Ga. App. 672, 592 S.E.2d 175 (2003).

Continued existence of corporation. — Corporation continued to exist as a corporate entity because an attorney hired by the debtor to represent the corporation in the sale of real property, who was unaware of the bankruptcy and tendered the sale proceeds to the debtor, did not owe a fiduciary duty to the bankruptcy trustee or other corporate shareholders; dissolution of the corporation did not allow disregard of the entity under O.C.G.A. § 14-2-1405. Anderson v. Patel (In re Kataria), No. 01-74588, 2006 Bankr. LEXIS 1360 (Bankr. N.D. Ga. Apr. 5, 2006).

14-2-1408. Articles of dissolution.

(a) If a notice of intent to dissolve under Code Section 14-2-1403 has not been revoked, when all known debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision made therefor, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date on which a notice of intent to dissolve was filed and a statement that it has not been revoked;

(3) A statement that all known debts, liabilities, and obligations of the corporation have been paid and discharged, or that adequate provision has been made therefor;

(4) A statement that all remaining property and assets of the corporation have been distributed among its shareholders in accor-

dance with their respective rights and interests, or that adequate provision has been made therefor, or that such property and assets have been deposited with the Office of the State Treasurer as provided in Code Section 14-2-1440; and

(5) A statement that there are no actions pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending action.

(b) Upon filing of articles of dissolution the corporation shall cease to exist, except for the purpose of actions or other proceedings, which may be brought against the corporation by service upon any of its last executive officers named in its last annual registration, and except for such actions as the shareholders, directors, and officers take to protect any remedy, right, or claim on behalf of the corporation, or to defend, compromise, or settle any claim against the corporation, all of which may proceed in the corporate name.

(c) Deeds or other transfer instruments requiring execution after the dissolution of a corporation may be signed by any two of the last officers or directors of the corporation and shall operate to convey the interest of the corporation in the real estate or other property described. (Code 1981, § 14-2-1408, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 63; Ga. L. 1990, p. 257, § 23; Ga. L. 2001, p. 796, § 1; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" near the end of paragraph (a)(4).

JUDICIAL DECISIONS

Jurisdiction. — Because the lender, an entity originally formed under Georgia law, dissolved before the homeowner filed his complaint, he was required to serve process on any of the executive officers named in the lender's last annual registration; the person the homeowner served was not authorized to accept service and the district court did not acquire personal jurisdiction over the lender before the entry of default and that good cause existed to set that default aside. Thomas v. Bank of Am., N.A., 2014 U.S. App. LEXIS 3162 (11th Cir. Feb. 21, 2014) (Unpublished).

14-2-1410. Preservation of remedies of dissolved corporations.

Law reviews. — For article, "Business Associations," see 63 Mercer L. Rev. 83 (2011).

JUDICIAL DECISIONS

Time for dissolved corporation to sue. — Trial court erred in denying the seller's motion to dismiss the dissolved corporation's renewal action, as that action was filed more than two years after the dissolved corporation was dissolved and applicable statutory law only gave the dissolved corporation two years from the time of dissolution to file suit, regardless of whether that suit was an original action or was a renewal action filed after the original action had been voluntarily dismissed. Deere & Co. v. JPS Dev., Inc., 264 Ga. App. 672, 592 S.E.2d 175 (2003).

Corporation that had been administratively dissolved under O.C.G.A. § 14-2-1420 when the corporation filed the corporation's suit for property damage failed to file suit within two years as required by O.C.G.A. § 14-2-1410; therefore, the corporation's suit was a nullity. The later reinstatement of the corporation under O.C.G.A. § 14-2-1422 did not validate the lawsuit. GC Quality Lubricants v. Doherty, Duggan, & Rouse Insurors, 304 Ga. App. 767, 697 S.E.2d 871 (2010).

Part 2

Administrative Dissolution

14-2-1420. Grounds for administrative dissolution.

Law reviews. — For article, "Post-Creation Checklist for Georgia Business Entities," see 9 Ga. St. B.J. 24 (2004).

JUDICIAL DECISIONS

Reinstatement of corporation. — Corporation that had been administratively dissolved under O.C.G.A. § 14-2-1420 when the corporation filed the corporation's suit for property damage failed to file suit within two years as required by O.C.G.A. § 14-2-1410; therefore, the corporation's suit was a nullity. The later reinstatement of the corporation under O.C.G.A. § 14-2-1422 did not validate the lawsuit. GC Quality Lubricants v. Doherty, Duggan, & Rouse Insurors, 304 Ga. App. 767, 697 S.E.2d 871 (2010).

14-2-1421. Procedure for and effect of administrative dissolution.

JUDICIAL DECISIONS

Prosecuting an action.

Trial court erred in denying the seller's motion to dismiss the dissolved corporation's renewal action, as that action was filed more than two years after the dissolved corporation was dissolved and applicable statutory law only gave the dissolved corporation two years from the time of dissolution to file suit, regardless of whether that suit was an original action or was a renewal action filed after the original action had been voluntarily dismissed. Deere & Co. v. JPS Dev., Inc., 264 Ga. App. 672, 592 S.E.2d 175 (2003).

14-2-1422. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under Code Section 14-2-1421 may apply to the Secretary of State for reinstatement within five years after the effective date of such dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) Either be executed by the registered agent or an officer, director, or shareholder of the corporation, in each case as set forth in the most recent annual registration of the corporation filed with the Secretary of State, or be accompanied by a notarized statement, executed by a person who was an officer, director, or shareholder, or an heir, successor, or assign of a person who was an officer, director, or shareholder, of the corporation at the time that the corporation was administratively dissolved, stating that such person or decedent was an officer, director, or shareholder of the corporation at the time of administrative dissolution and such person has knowledge of and assents to the application for reinstatement;

(4) Contain a statement by the corporation reciting that all taxes owed by the corporation have been paid; and

(5) Be accompanied by the fee required for the application for reinstatement contained in Code Section 14-2-122.

(b) The Secretary of State shall reserve the name of a corporation administratively dissolved under Code Section 14-2-1421 for such corporation's specific use for a period of five years after the effective date of the dissolution or until the corporation is reinstated, whichever is sooner.

(c) If the Secretary of State determines that the application contains the information required by subsection (a) of this Code section and that the information is correct, the Secretary of State shall prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under Code Section 14-2-504.

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(e) This Code section shall apply to all corporations administratively dissolved under Code Section 14-2-1421 or any similar former statute,

regardless of the date of dissolution. (Code 1981, § 14-2-1422, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1995, p. 975, § 1; Ga. L. 1997, p. 1165, § 11.1; Ga. L. 2008, p. 253, § 7/SB 436; Ga. L. 2011, p. 430, § 2/SB 64.)

The 2008 amendment, effective July 1, 2008, in subsection (a), in the introductory language, added "within five years after the effective date of such dissolution" at the end of the first sentence, and substituted "shall" for "must" at the end; in paragraph (a)(3), substituted the present provisions for the former provisions, which read: "State that the name by which the corporation will be known after reinstatement satisfies the requirements of Code Section 14-2-401"; and, in subsection (b), substituted the present provisions for the former provisions, which read: "If the corporation's name no longer satisfies the requirements of Code Section 14-2-401, the corporation shall, as a condition of reinstatement, include in its application for reinstatement the adoption of a corporate name that is available in accordance with Code Section 14-2-401 and that has been reserved pursuant to Code Section 14-2-402. If the application for reinstatement contains a new corporate name, the articles of incorporation shall be deemed to have been amended to change the name of the corporation to the name so adopted."

The 2011 amendment, effective July 1, 2011, substituted the present provisions of paragraph (a)(5) for the former provisions, which read: "Be accompanied by an amount equal to the total annual registration fees and penalties that would have been payable during the periods between dissolution and reinstatement, plus the fee required for the application for reinstatement, and any other fees and penalties payable for earlier periods."

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008). For article, "Business Associations," see 63 Mercer L. Rev. 83 (2011).

JUDICIAL DECISIONS

Reinstatement did not validate a suit brought by a dissolved corporation. — Corporation that had been administratively dissolved under O.C.G.A. § 14-2-1420 when the corporation filed the corporation's suit for property damage failed to file suit within two years as required by O.C.G.A. § 14-2-1410; therefore, the corporation's suit was a nullity. The later reinstatement of the corporation under O.C.G.A. § 14-2-1422 did not validate the lawsuit. GC Quality Lubricants v. Doherty, Duggan, & Rouse Insurors, 304 Ga. App. 767, 697 S.E.2d 871 (2010).

Cited in Deere & Co. v. JPS Dev., Inc., 264 Ga. App. 672, 592 S.E.2d 175 (2003).

Part 3

Judicial Dissolution

14-2-1430. Grounds for judicial dissolution.

JUDICIAL DECISIONS

Settlement agreements. — Partner's refusal to fulfill the terms of an agreement the partner entered to settle a lawsuit filed by another partner, which sought an order dissolving two corporations, pursuant to O.C.G.A. § 14-2-1430(2)(A), contravened public policy favoring settlements, and the appellate court found that the partner's appeal from the trial court's judgment ordering the partner to comply with the settlement agreement was frivolous and warranted sanctions pursuant to

Ga. Ct. App. R. 15(b). McClain v. George, 267 Ga. App. 851, 600 S.E.2d 837 (2004).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 7B Am. Jur. Pleading and Practice Forms, Corporations, § 410.

14-2-1431. Procedure for judicial dissolution.

JUDICIAL DECISIONS

Action against court-appointed receiver. — If a trial court appoints a receiver under O.C.G.A. § 14-2-1431(c), not under O.C.G.A. § 9-8-8, nothing precludes an intervening party from suing the receiver, particularly when the harm at issue cannot be resolved by the receiver's removal. Vautrot v. West, 272 Ga. App. 715, 613 S.E.2d 19 (2005).

Trial court erred by awarding attorney fees to a receiver appointed under O.C.G.A. § 14-2-1431(c) for the receiver's defense of a shareholder's claim of breach of fiduciary duty; because the shareholder brought the complaint on the shareholder's own behalf and not on behalf of the corporation, any legal fees that the shareholder incurred or that were assessed were the shareholder's individual responsibility and did not constitute corporate obligations or debts to be paid as part of the receiver's fees. Vautrot v. West, 272 Ga. App. 715, 613 S.E.2d 19 (2005).

Expansion of receiver's powers to effectuate court ordered duties. — Trial court properly entered an order expanding the powers of a receiver who was appointed to oversee the operation of a limited liability company (LLC) during the pendency of a judicial dissolution of the LLC where the order was based on an affidavit the receiver submitted that indicated the receiver was unable to fulfill the receiver's duties due to the actions of one of the 50% owners of the LLC. Ga. Rehab. Ctr., Inc. v. Newnan Hosp., 284 Ga. 68, 663 S.E.2d 204 (2008).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to dissolution and winding up of affairs of limited liability company, 49 ALR6th 1.

14-2-1432. Receivership or custodianship.

JUDICIAL DECISIONS

Claims against court-appointed receivers. — Trial court erred by awarding attorney fees to a receiver appointed under O.C.G.A. § 14-2-1431(c) for the receiver's defense of a shareholder's claim of breach of fiduciary duty; because the shareholder brought the complaint on the shareholder's own behalf and not on behalf of the corporation, any legal fees that the shareholder incurred or that were assessed were the shareholder's individual responsibility and did not constitute corporate obligations or debts to be paid as part of the receiver's fees. Vautrot v. West, 272 Ga. App. 715, 613 S.E.2d 19 (2005).

14-2-1433. Decree of dissolution.

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in Code Section 14-2-1430 exist, it may enter a decree ordering the corporation dissolved, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it, with the same effect as a notice of intent to dissolve.

(b) After entering the order of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with Code Section 14-2-1405. Winding up the business of a corporation judicially dissolved may include the corporation's proceeding, after the date of the order of dissolution, (1) in accordance with Code Section 14-2-1406 to notify known claimants, and (2) to mail or deliver, with accompanying payment of the cost of publication, a notice containing the information specified in subsection (b) of Code Section 14-2-1407 for publication in accordance with subsection (b) of Code Section 14-2-1403.1. Upon such notice, claims against the dissolved corporation will be limited as specified in Code Sections 14-2-1406 and 14-2-1407, respectively.

(c) When the costs and expenses of dissolution proceedings and all debts, obligations, and liabilities of the corporation have been paid and discharged or provided for and all of its remaining assets distributed to its shareholders or provided for or such assets have been deposited with the Office of the State Treasurer as provided in Code Section 14-2-1440, the court shall enter a decree of dissolution, and upon filing of the decree with the Secretary of State, it shall have the same effect as articles of dissolution. (Code 1981, § 14-2-1433, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1990, p. 257, § 25; Ga. L. 2001, p. 796, § 2; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" near the middle of subsection (c).

Part 4

Miscellaneous

14-2-1440. Deposit of assets with Office of the State Treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Office of the State Treasurer for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof

of entitlement to the amount deposited, the Office of the State Treasurer shall pay him or her or his or her representative that amount. After the Office of the State Treasurer has held the unclaimed cash for six months, the Office of the State Treasurer shall pay such cash to the Board of Regents of the University System of Georgia, to be held without liability for profit or interest until a claim for such cash shall be filed with the Office of the State Treasurer by the parties entitled thereto. No such claim shall be made more than six years after such cash is deposited with the Office of the State Treasurer. (Code 1981, § 14-2-1440, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2001, p. 796, § 3; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" throughout this Code section.

ARTICLE 15

FOREIGN CORPORATIONS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Liability for a Corporation's Failure to File as a Corporation Doing Business in a Foreign Jurisdiction, 60 POF3d 363.

Part 1

Certificate of Authority

14-2-1501. Authority to transact business required.

JUDICIAL DECISIONS

Analysis

General Consideration
Transacting Business
Interstate Commerce

General Consideration

Service of process under long-arm statute. — O.C.G.A. § 9-11-4(e)(1) did not govern service of process in a manufacturer's breach of contract action against a distributor because the distributor was not "authorized to transact business in the State" as that phrase was used in O.C.G.A. § 9-11-4(e)(1); the distributor did not show that the distributor was a corporation incorporated or domesticated under the laws of Georgia, because the distributor pointed to no evidence that the distributor obtained the requisite certificate of authority to transact business in the state from the Georgia Secretary of State pursuant to O.C.G.A. § 14-2-1501(a) and because the distributor was a nonresident subject to the long-arm statute, O.C.G.A. § 9-10-90 et

seq. Kitchen Int'l, Inc. v. Evans Cabinet Corp., 310 Ga. App. 648, 714 S.E.2d 139 (2011).

Transacting Business

Surplus insurers. — Surplus insurers were authorized to file a declaratory judgment action to preserve their right to raise untimely notice of an occurrence as a defense to coverage even without a certificate of authority to conduct business in the state of Georgia. Kay-Lex Co. v. Essex Ins. Co., 286 Ga. App. 484, 649 S.E.2d 602 (2007).

Interstate Commerce

Foreign corporation not transacting business and dismissal proper. — Trial court did not err in denying a garnishee's motion to dismiss because the garnishor, a foreign corporation, was not shown to have been transacting business in the State of Georgia without the proper certification, and the garnishee did not plead an affirmative defense under O.C.G.A. § 14-2-1502(a). Carrier411 Servs. v. Insight Tech., Inc., 322 Ga. App. 167, 744 S.E.2d 356 (2013).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 12 Am. Jur. Pleading and Practice Forms, Foreign Corporations, § 3.

14-2-1502. Consequences of transacting business without authority.

JUDICIAL DECISIONS

ANALYSIS

WHEN CERTIFICATE NOT REQUIRED
DISMISSAL

When Certificate Not Required

Surplus insurers. — Surplus insurers were authorized to file a declaratory judgment action to preserve their right to raise untimely notice of an occurrence as a defense to coverage even without a certificate of authority to conduct business in the state of Georgia. Kay-Lex Co. v. Essex Ins. Co., 286 Ga. App. 484, 649 S.E.2d 602 (2007).

Dismissal

Dismissal properly denied. — Trial court did not err in denying a garnishee's motion to dismiss because the garnishor, a foreign corporation, was not shown to have been transacting business in the State of Georgia without the proper certification, and the garnishee did not plead an affirmative defense under O.C.G.A. § 14-2-1502(a). Carrier411 Servs. v. Insight Tech., Inc., 322 Ga. App. 167, 744 S.E.2d 356 (2013).

14-2-1504. Amended certificate of authority; conversion of foreign corporation into foreign limited liability company or foreign limited partnership.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;

(2) The period of its duration; or

(3) The state or country of its incorporation.

(b) The requirements of Code Section 14-2-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this Code section.

(c) If a foreign corporation authorized to transact business in this state converts into a foreign limited liability company:

(1) The foreign corporation shall notify the Secretary of State that such conversion has occurred no later than 30 days after the conversion, using such form as the Secretary of State shall specify, which form may require such information and statements as may be required to be submitted by a foreign limited liability company that applies for a certificate of authority to transact business in this state; and

(2) If such notice is timely given:

(A) The authorization of such entity to transact business in this state shall continue without interruption; and

(B) The certificate of authority issued to such foreign corporation under this article shall constitute a certificate of authority issued under Code Section 14-11-704 to the foreign limited liability company resulting from the conversion effective as of the date of the conversion.

The Secretary of State shall adjust its records accordingly.

(d) If a foreign corporation authorized to transact business in this state converts into a foreign limited partnership:

(1) The foreign corporation shall notify the Secretary of State that such conversion has occurred no later than 30 days after the conversion, using such form as the Secretary of State shall specify, which form may require such information and statements as may be required to be submitted by a foreign limited partnership that applies for a certificate of authority to transact business in this state; and

(2) If such notice is timely given:

(A) The authorization of such entity to transact business in this state shall continue without interruption; and

(B) The certificate of authority issued to such foreign corporation under this part shall constitute a certificate of authority issued under Code Section 14-9-903 to the foreign limited partnership

resulting from the conversion effective as of the date of the conversion.

The Secretary of State shall adjust its records accordingly. (Code 1981, § 14-2-1504, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2006, p. 825, § 18/SB 469.)

The 2006 amendment, effective July 1, 2006, added subsections (c) and (d).

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

COMMENT

Note to 2006 Amendment

New subsections (c) and (d) of Code Section 14-2-1504 specify the procedures that apply when a foreign corporation authorized to transact business in Georgia converts into a limited liability company or limited partnership formed or organized under the laws of a jurisdiction other than Georgia. Rather than having to obtain a certificate of withdrawal and to procure a certificate of authority as a foreign limited liability company or foreign limited partnership, the amendments to Code Section 14-2-1504 provide that if a foreign corporation authorized to transact business in Georgia converts into a foreign limited liability company or foreign limited partnership and notifies the Secretary of State that such conversion has occurred no later than 30 days after such conversion has become effective, the authorization of such entity to transact business in Georgia will continue without interruption and the certificate of authority issued under Article 15 of this chapter will constitute a certificate of authority issued under Code Section 14-11-704 or Code Section 14-9-903 to the foreign limited liability company or foreign limited partnership, as the case may be.

14-2-1506. Corporate name of foreign corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of Code Section 14-2-401, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or the name of its state of incorporation to its corporate name for use in this state; or

(2) May use a fictitious or trade name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious or trade name.

(b) Except as authorized by subsections (c) and (d) of this Code section, a corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved under Code Section 14-2-402;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(4) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state; and

(5) The name of a limited partnership or professional association filed with the Secretary of State.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if the other corporation files with the Secretary of State articles of amendment to its articles of incorporation changing its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation.

(d) A foreign corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and:

(1) The foreign corporation has merged with the other corporation;

(2) The foreign corporation has been formed by reorganization of the other corporation; or

(3) The other domestic or foreign corporation has taken the steps required by this chapter to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the foreign corporation applying to use its former name.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of Code Section 14-2-401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of Code Section 14-2-401 and obtains an amended certificate of authority under Code Section 14-2-1504. (Code 1981, § 14-2-1506, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2006, p. 825, § 19/SB 469.)

The 2006 amendment, effective July 1, 2006, in paragraph (b)(2), deleted "or registered" following "reserved" near the middle, and deleted "or 14-2-403" at the end.

COMMENT

Note to 2006 Amendment

Subsection (b)(2) of Code Section 14-2-1506 was amended for purposes of deleting references to "or registered" and "or 14-2-403." Code Section 14-2-403, which was repealed in 2002, provided a means by which a foreign corporation, not qualified to transact business in Georgia, could preserve the right to use its unique real name if it subsequently elected to qualify in Georgia.

14-2-1510. Service on foreign corporation.

JUDICIAL DECISIONS

Service on bank manager sufficient. — Deputy sheriff's service of a wrongful foreclosure complaint on a mortgagee's local branch manager at a branch office, rather than on the designated registered agent for service, was proper service pursuant to O.C.G.A. §§ 9-11-4 and 14-2-1510(d), and the trial court properly denied the mortgagee's motion to open a default pursuant to O.C.G.A. § 9-11-55(b) based on its claim that there was no jurisdiction due to improper service; the deputy's testimony that the manager indicated that the manager was authorized to accept service and that the manager did in fact accept the papers was entitled to a presumption in favor of the return of service. GMAC Mortg. Corp. v. Bongiorno, 277 Ga. App. 328, 626 S.E.2d 536 (2006).

Full faith and credit given to out-of-state order. — Trial court did not err by requiring defendant to proceed to trial without the source code and other requested information because it had granted a certificate pursuant to O.C.G.A. § 24-13-94 to permit the defense an opportunity to obtain the information from the manufacturer located in Kentucky, set the case with enough time to do so, and, after the Kentucky court issued an order denying the request, which order was entitled to full faith and credit, required defendant to proceed to trial. Phillips v. State, 324 Ga. App. 728, 751 S.E.2d 526 (2013).

ARTICLE 16

RECORDS AND REPORTS

PART 1

RECORDS

14-2-1602. Inspection of records by shareholders.

(a) A corporation shall keep a copy of the following records:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by either its shareholders or board of directors increasing or decreasing the number of directors, the classification of directors, if any, and the names and residence addresses of all members of the board of directors;

(4) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding and any resolutions adopted by the board of directors that affect the size of the board of directors;

(5) The minutes of all shareholders' meetings, executed waivers of notice of meetings, and executed consents, delivered in writing or by electronic transmission, evidencing all action taken by shareholders without a meeting, for the past three years;

(6) All communications in writing or by electronic transmission to shareholders generally within the past three years, including the financial statements furnished for the past three years under Code Section 14-2-1620;

(7) A list of the names and business addresses of its current directors and officers; and

(8) Its most recent annual registration delivered to the Secretary of State under Code Section 14-2-1622.

(b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection (a) of this Code section if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

(c) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (d) of this Code section and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this Code section;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(d) A shareholder may inspect and copy the records described in subsection (c) of this Code section only if:

(1) His demand is made in good faith and for a proper purpose that is reasonably relevant to his legitimate interest as a shareholder;

(2) He describes with reasonable particularity his purpose and the records he desires to inspect;

(3) The records are directly connected with his purpose; and

(4) The records are to be used only for the stated purpose.

(e) The right of inspection granted by this Code section may not be abolished or limited by a corporation's articles of incorporation or bylaws. However, the right to inspection enumerated in subsection (c) of this Code section may be limited by a corporation's articles of incorporation or bylaws for shareholders owning 2 percent or less of the shares outstanding.

(f) This Code section does not affect:

(1) The right of a shareholder to inspect records under Code Section 14-2-720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

(g) For purposes of this Code section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf. (Code 1981, § 14-2-1602, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 20.)

The 2004 amendment, effective July 1, 2004, in subsection (a), substituted "consents, delivered in writing or by electronic transmission," for "written consents" in paragraph (a)(5) and substituted "communications in writing or by electronic transmission" for "written communications" in paragraph (a)(6).

Law reviews. — For annual survey on business associations, see 61 Mercer L. Rev. 45 (2009). For article, "Business Associations," see 63 Mercer L. Rev. 83 (2011). For annual survey on business corporations, see 64 Mercer L. Rev. 61 (2012).

For note, "Skimming from the 2%: The Status of Georgia's Restrictions on Shareholder Access to Corporate Information," 46 Ga. L. Rev. 835 (2012).

COMMENT

Note to 2004 Amendment

The 2004 amendments require a corporation to retain for three years copies of all shareholder minutes, waivers, and consents evidencing actions taken without a

meeting, which are delivered by electronic transmission, and all communications by electronic transmission by a corporation to its shareholders.

JUDICIAL DECISIONS

Construction with O.C.G.A. § 14-2-940. — Language of O.C.G.A. § 14-2-940(b), governing closely held corporations, did not preclude a shareholder from availing oneself of the provisions of O.C.G.A. §§ 14-2-1602 and 14-2-1604, relating to inspection of corporate records, in a separate suit despite the shareholder's pending action against the corporation for breach of fiduciary duty. Advanced Automation, Inc. v. Fitzgerald, 312 Ga. App. 406, 718 S.E.2d 607 (2011).

Proper reasons for seeking inspection of records. — Company's former chief executive officer and former president sought inspection of the company's corporate records for proper purposes where the inspection sought to enforce the company's bylaws, to ensure proper corporate governance, to determine if corporate waste, mismanagement and other breaches of fiduciary duty were occurring, and to protect their substantial ownership interests in the company as well as the interests of other shareholders. Kelley Mfg. Co. v. Martin, 296 Ga. App. 236, 674 S.E.2d 92 (2009).

Participants in employee stock ownership plan were beneficial owners of stock. — Although the record owner of all of the shares of a company's stock was the company's employee stock ownership plan (ESOP), and no nominee or voting trust was on file regarding the shares, the company's former chief executive officer and its former company president, as participants in the ESOP, were beneficial owners of the shares allocated to them and were entitled to inspect corporate records pursuant to O.C.G.A. §§ 14-2-1602 through 14-2-1604. Kelley Mfg. Co. v. Martin, 296 Ga. App. 236, 674 S.E.2d 92 (2009).

Enforcement action to be brought against corporation. — Minority shareholder's claims against other shareholders for refusing the minority shareholder's request to inspect corporate records was properly dismissed; such a claim could only be brought against the corporation pursuant to O.C.G.A. § 14-2-1604. The minority shareholder's claim for misappropriation of corporate assets was also dismissed because it was a derivative claim, required to be brought on behalf of the corporation pursuant to O.C.G.A. § 14-2-740 et seq. Barnett v. Fullard, 306 Ga. App. 148, 701 S.E.2d 608 (2010).

Common law right superseded by statute. — Minority shareholder did not have a common law right to inspect a corporation's records and books because O.C.G.A. § 14-2-1602(e) disallowed such a right for shareholders who owned less than 2% of a corporation's shares and the legislative history indicated an intent for the statutory provision to supersede the common law right. Mannato v. SunTrust Banks, Inc., 308 Ga. App. 691, 708 S.E.2d 611 (2011).

14-2-1603. Scope of inspection right.

Law reviews. — For annual survey on business associations, see 61 Mercer L. Rev. 45 (2009).

14-2-1604. Court-ordered inspection.

Law reviews. — For annual survey on business associations, see 61 Mercer L. Rev. 45 (2009).

JUDICIAL DECISIONS

Construction with O.C.G.A. § 14-2-940. — Language of O.C.G.A. § 14-2-940(b), governing closely held corporations, did not preclude a shareholder from availing oneself of the provisions of O.C.G.A. §§ 14-2-1602 and 14-2-1604, relating to inspection of corporate records, in a separate suit despite the shareholder's pending action against the corporation for breach of fiduciary duty. Advanced Automation, Inc. v. Fitzgerald, 312 Ga. App. 406, 718 S.E.2d 607 (2011).

Enforcement action to be brought against corporation. — Minority shareholder's claims against other shareholders for refusing the minority shareholder's request to inspect corporate records was properly dismissed; such a claim could only be brought against the corporation pursuant to O.C.G.A. § 14-2-1604. The minority shareholder's claim for misappropriation of corporate assets was also dismissed because it was a derivative claim, required to be brought on behalf of the corporation pursuant to O.C.G.A. § 14-2-740 et seq. Barnett v. Fullard, 306 Ga. App. 148, 701 S.E.2d 608 (2010).

Dismissal of appeal proper. — Notice of appeal filed by several related companies in an action under O.C.G.A. § 14-2-1604 was properly dismissed for failure to timely pay a bill of costs pursuant to O.C.G.A. § 5-6-48(c) as the 64-day delay in paying was due to counsel's failure to confirm that payment had been made; thus, the delay was inexcusable and unreasonable. Langdale Co. v. Langdale, 295 Ga. App. 372, 671 S.E.2d 863 (2008).

Part 2

Reports

14-2-1620. Financial statements for shareholders.

(a) Not later than four months after the close of each fiscal year and in any case prior to the annual meeting of shareholders, each corporation shall prepare (1) a balance sheet showing in reasonable detail the financial condition of the corporation as of the close of its fiscal year and (2) a profit and loss statement showing the results of its operation during its fiscal year. Upon request in writing or by electronic transmission, the corporation promptly shall mail to any shareholder of record a copy of the most recent balance sheet and profit and loss statement. If prepared for other purposes, the corporation shall also furnish upon request in writing or by electronic transmission a statement of sources and applications of funds and a statement of changes in shareholders' equity for the fiscal year. If financial statements are prepared by the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared and disclose that they are prepared on that basis. If financial statements are prepared otherwise than on the basis of generally accepted accounting principles, they must so disclose and must be prepared on the same basis as other reports or statements prepared by the corporation for the use of others.

(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements

must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year. (Code 1981, § 14-2-1620, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 21.)

The 2004 amendment, effective July 1, 2004, in subsection (a), deleted the comma following "year" near the end of the first sentence, substituted "request in writing or by electronic transmission" for "written request" in the second and third sentences, and deleted a comma following "prepared" twice near the end of the fourth sentence.

COMMENT

Note to 2004 Amendment

The 2004 amendments permit a shareholder to submit a request by electronic transmission for certain financial statements of the corporation.

14-2-1622. Annual registration for Secretary of State.

Law reviews. — For article, "Post-Creation Checklist for Georgia Business Entities," see 9 Ga. St. B.J. 24 (2004).

JUDICIAL DECISIONS

Cited in Holmes & Co. v. Carlisle, 289 Ga. App. 619, 658 S.E.2d 185 (2008).

CHAPTER 3

NONPROFIT CORPORATIONS

Article 1

General Provisions

PART 2

DOCUMENTS

PART 3

SECRETARY OF STATE

ARTICLE 1

GENERAL PROVISIONS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Liability of Nonprofit Corporation for Engaging in For-Profit Business Activities, 46 POF3d 431.

PART 1

SHORT TITLE; LEGISLATIVE POWER

14-3-101. Short title.

Law reviews. — For symposium article, "Incorporation Choice, Uniformity, and the Reform of Nonprofit State Law," see 41 Ga. L. Rev. 1113 (2007). For symposium article, "Revising the Model Nonprofit Corporation Act: Plus Ca Change, Plus C'est La Meme Chose," see 41 Ga. L. Rev. 1335 (2007). For article, "Georgia Condominium Law: Beyond the Condominium Act," see 13 Ga. St. B.J. 24 (2007).

JUDICIAL DECISIONS

Construction with O.C.G.A. §§ 14-3-180 and 14-5-40. — Georgia Nonprofit Corporate Code, O.C.G.A. § 14-3-101 et seq., can be used to resolve certain controversies involving religious institutions, under O.C.G.A. §§ 14-3-180 and 14-5-40 et seq. Waverly Hall Baptist Church, Inc. v. Branham, 276 Ga. App. 818, 625 S.E.2d 23 (2005).

Requiring meeting was not impermissible intrusion. — Merely requiring a congregational church to hold a meeting pursuant to the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-101 et seq., did not constitute an impermissible intrusion or excessive entanglement into ecclesiastical matters. Waverly Hall Baptist Church, Inc. v. Branham, 276 Ga. App. 818, 625 S.E.2d 23 (2005).

Cited in Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

Part 2

Documents

14-3-120. Filing of documents.

(a) A document must satisfy the requirements of this Code section and of any other Code section that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(b) This chapter must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by this chapter. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the chairperson of the board of directors of a domestic or foreign corporation, its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary;

provided, however, the person executing the document may do so as an attorney in fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the Secretary of State.

(g) The person executing a document shall sign it and state beneath or opposite the signature his or her name and the capacity in which he or she signs; provided, however, that if the document is electronically transmitted, the electronic version of such person's name may be used in lieu of a signature. The document may, but need not, contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary; or

(3) An acknowledgment, verification, or proof.

(h) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one exact or conformed copy (except as provided in Code Sections 14-3-503 and 14-3-1509), the correct filing fee, any certificate required by this chapter, and any penalty required by this chapter or other law.

(i) Notwithstanding the provisions of this chapter, the Secretary of State may authorize the filing of documents by electronic transmission, following the provisions of Chapter 12 of Title 10, the "Uniform Electronic Transactions Act," and the Secretary of State shall be authorized to promulgate such rules and regulations as are necessary to implement electronic filing procedures. (Code 1981, § 14-3-120, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1999, p. 405, § 14; Ga. L. 2009, p. 698, § 2/HB 126.)

The 2009 amendment, effective July 1, 2009, substituted "Uniform Electronic Transactions Act" for "Georgia Electronic Records and Signatures Act" in the middle of subsection (i).

14-3-122. Filing fees.

The Secretary of State shall collect the following fees when the documents described in this Code section are delivered for filing:

Document	Fee
(1) Articles of incorporation	$ 100.00
(2) Application for certificate of authority	225.00
(3) Annual registration	30.00
(4) Penalty for late filing of annual registration	25.00
(5) Agent's statement of resignation	No fee
(6) Certificate of judicial dissolution	No fee
(7) Articles of dissolution or intent to dissolve	No fee

Document	Fee
(8) Application of withdrawal	No fee
(9) Application for reservation of a corporate name	25.00
(10) Statement of change of address of registered agent ..... $5.00 per corporation but not less than	20.00
(11) Application for reinstatement	250.00
(12) Any other document required or permitted to be filed by this chapter	20.00

(Code 1981, § 14-3-122, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1997, p. 1165, § 12; Ga. L. 1999, p. 405, § 15; Ga. L. 2003, p. 883, § 3; Ga. L. 2008, p. 253, § 8/SB 436; Ga. L. 2011, p. 430, § 3/SB 64.)

The 2008 amendment, effective July 1, 2008, in the introductory language, deleted the subsection (a) designation, and substituted "Code section" for "subsection"; added present paragraphs (4), (7), and (8); redesignated former paragraphs (4) and (5) as present paragraphs (5) and (6), respectively; redesignated former paragraphs (6) through (9) as present paragraphs (9) through (12), respectively; and deleted former subsection (b), which read: "(b) Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year shall not be required to pay any penalty for so failing or refusing to file its annual report, but such corporation may be subject to administrative dissolution as provided in Code Section 14-3-1420."

The 2011 amendment, effective July 1, 2011, substituted "250.00" for "100.00" in paragraph (11).

14-3-125. Duty of Secretary of State to file documents; effect of filing or refusing to do so.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of Code Section 14-3-120, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing his or her official title and the date and time of receipt on both the original and the document copy. After filing a document, except as provided in Code Sections 14-3-503 and 14-3-1510, the Secretary of State shall deliver the document copy to the domestic or foreign corporation or its representative.

(c) If the Secretary of State refuses to file a document, he or she shall return it to the domestic or foreign corporation or its representative within ten days after the document was delivered, together with a brief, written explanation of the reason for his or her refusal.

(d) The Secretary of State's duty to file documents under this Code section is ministerial. Filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect. (Code 1981, § 14-3-125, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, §§ 66, 68.)

The 2004 amendment, effective July 1, 2004, throughout this Code section, substituted "he or she" for "he" and substituted "his or her" for "his".

14-3-126. Appeal from Secretary of State's refusal to file document.

(a) If the Secretary of State refuses to file a document delivered to his or her office for filing, the domestic or foreign corporation may appeal the refusal within 30 days after the return of the document to the superior court. The appeal is commenced by petitioning the court to compel filing of the document and by attaching to the petition the document and the Secretary of State's explanation of his or her refusal to file.

(b) The matter shall promptly be tried de novo by the court without a jury. The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings. (Code 1981, § 14-3-126, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 68.)

The 2004 amendment, effective July 1, 2004, substituted "his or her" for "him" twice in subsection (a).

14-3-129. Penalty for signing false document.

A person who signs a document he or she knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $500.00. (Code 1981, § 14-3-129, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 66.)

The 2004 amendment, effective July 1, 2004, substituted "he or she" for "he" near the beginning of this Code section.

PART 3

SECRETARY OF STATE

14-3-130. Powers of Secretary of State.

The Secretary of State has the power reasonably necessary to perform the duties required of him or her by this chapter. (Code 1981, § 14-3-130, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 67.)

The 2004 amendment, effective July 1, 2004, substituted "him or her" for "him" near the end of this Code section.

PART 4

DEFINITIONS; NOTICE

14-3-140. Definitions.

As used in this chapter, the term:

(1) "Articles of incorporation" or "articles" includes amended and restated articles of incorporation and articles of merger.

(2) "Board of directors" or "board" means the person or persons vested with the authority to manage the affairs of the corporation, irrespective of the name by which such group is designated, but shall not include any person solely by virtue of powers delegated to him or her by Code Section 14-3-801.

(3) "Business corporation" means a corporation for profit, incorporated under the provisions of Chapter 2 of this title.

(4) "Bylaws" means the code of rules other than the articles adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, irrespective of the name or names by which such rules are designated.

(5) "Class" refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For the purpose of this Code section, rights shall be considered the same if they are determined by a formula applied uniformly.

(6) "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, incorporated under or subject to the provisions of this chapter.

(7) "Delegate" means a person elected or appointed to vote in a representative assembly for the election of a director or on other matters.

(8) "Deliver" includes delivery by hand, mail, private carrier, and electronic transmission.

(9) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers. Payment of indemnification or reasonable compensation, fees, or expenses incurred in the performance of duties on behalf of the corporation is not a distribution.

(10) "Effective date of notice" is defined in Code Section 14-3-141.

(11) "Electronic network" means any medium for sending, receiving, and viewing electronic transmissions among persons.

(12) "Electronic transmission" or "electronically transmitted" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Electronic transmissions include, but are not limited to, telegraphs, telegrams, cablegrams, teletypes, e-mail, and facsimile transmissions.

(13) "Employee" includes an officer but not a director. A director may accept duties that make him or her also an employee.

(14) "Entity" includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; business trust, estate, general partnership, limited partnership, trust, two or more persons having a joint or common economic interest; limited liability company and foreign limited liability company; limited liability partnership and foreign limited liability partnership; state, United States, and foreign government; and regional commission solely for the purpose of implementing subsection (f) of Code Section 50-8-35.

(15) "Foreign business corporation" means a corporation for profit incorporated under a law other than the law of this state.

(16) "Foreign corporation" means a corporation incorporated under a law other than the law of this state which would be a nonprofit corporation if incorporated under, or subject to, this chapter.

(17) "Governmental subdivision" includes an authority, county, district, and municipality or any other political subdivision.

(18) "Includes" denotes a partial definition.

(19) "Individual" includes the estate of an incompetent or deceased individual.

(20) "Mail" includes the United States mail.

(21) "Means" denotes an exhaustive definition.

(22) "Member" means without regard to the name by which a person is designated in the articles or bylaws any person who is entitled to vote for the election of a director or directors pursuant to a provision of the corporation's articles or bylaws that expressly provides for or contemplates the existence of members. A person is not a member by virtue of any of the following:

(A) Any rights such person has as a delegate;

(B) Any rights such person has to designate or confirm a director or directors; or

(C) Any rights such person has as a director.

(23) "Notice" is defined in Code Section 14-3-141.

(24) "Person" includes an individual and an entity.

(25) "Principal office" means the office in or out of this state so designated in the annual registration where the principal executive offices of a domestic or foreign corporation are located.

(26) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(27) "Record date" means the date established under Article 6 or 7 of this chapter on which a corporation determines the identity of its members for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(28) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under subsection (b) of Code Section 14-3-840 for custody of the minutes of the meetings of the board of directors and of any members and for authenticating records of the corporation.

(29) "Signature" or "sign" includes any manual, facsimile, conformed, or electronic signature.

(30) "State," when referring to a part of the United States, includes a state, commonwealth, the District of Columbia (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.

(31) "Superior court" means the superior court of the county in which the corporation's registered office is located; or, if the corporation has no registered office, the county in which the corporation's principal office is located; or, if the corporation has neither a regis-

tered office nor a principal office, then the Superior Court of Fulton County.

(32) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

(33) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors. (Code 1981, § 14-3-140, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1992, p. 2108, § 2; Ga. L. 1997, p. 1165, § 12.1; Ga. L. 1999, p. 405, § 17; Ga. L. 2004, p. 508, § 22; Ga. L. 2005, p. 60, § 14/HB 95; Ga. L. 2008, p. 181, § 14/HB 1216.)

The 2004 amendment, effective July 1, 2004, rewrote this Code section.

The 2005 amendment, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, redesignated former paragraph (11) as present paragraph (12) and former paragraph (12) as present paragraph (11).

The 2008 amendment, effective July 1, 2009, substituted "regional commission" for "regional development center" in paragraph (14).

JUDICIAL DECISIONS

Membership found. — For purposes of interlocutory injunctive relief, the trial court properly found that the second of two factions controlled a nonprofit corporation. There was evidence that the corporation, a temple, had members, consisting of people who regularly attended the temple and participated in its events; furthermore, there was evidence that the members had been properly notified of an annual meeting and that more than 50 percent of the members appeared at the meeting and voted unanimously to elect the second faction to the board of directors. Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-141. Notice.

(a) Notice under this chapter shall be in writing or by electronic transmission unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, electronic transmission, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication. Unless otherwise provided in the articles of incorporation, bylaws, or this chapter, notice by electronic transmission shall be deemed to be notice in writing for purposes of this chapter.

(c) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the member's address shown in the corporation's current record of members. If the corporation has more than 500 members of record entitled to vote at a meeting, it may utilize a class of mail other than first class if the notice of the meeting is mailed, with adequate postage prepaid, not less than 30 days before the date of the meeting.

(d) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual registration or, in the case of a foreign corporation that has not yet delivered an annual registration, in its application for a certificate of authority.

(e) Except as provided in subsections (c) and (h) of this Code section or in the articles of incorporation or bylaws, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received or when delivered, properly addressed, to the addressee's last known principal place of business or residence;

(2) Five days after its deposit in the mail, as evidenced by the postmark, if mailed with first-class postage prepaid and correctly addressed; or

(3) On the date shown on the return receipt, if sent by registered or certified mail or statutory overnight delivery, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) In calculating time periods for notice under this chapter, when a period of time measured in days, weeks, months, years, or other measurement of time is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted.

(h)(1) Without limiting the manner by which notice otherwise may be given effectively to members, any notice to members given by the corporation under any provision of this chapter, the articles of incorporation, or the bylaws shall be effective if given by a form of electronic transmission consented to by the member to whom the notice is given. Any such consent shall be revocable by the member by written notice to the corporation. Any such consent shall be deemed revoked if:

(A) The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and

(B) Such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(2) Notice given pursuant to this subsection shall be deemed effective:

(A) If by facsimile telecommunication, when transmitted to a number at which the member has consented to receive notice;

(B) If by e-mail, when transmitted to an e-mail address at which the member has consented to receive notice;

(C) If by a posting on an electronic network together with separate notice to the member of such specific posting, upon the later of (i) such posting or (ii) the giving of such separate notice; and

(D) If by any other form of electronic transmission, when transmitted to the member.

(i) An affidavit, certificate, or other written confirmation of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given under this Code section shall, in the absence of fraud, be prima-facie evidence of the facts stated therein.

(j) The corporation may be obligated to accept from a member consents, requests, demands, or notices given and delivered under this chapter to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the books in which proceedings of meetings of members are recorded by electronic transmission only as provided by resolution of the board of directors of the corporation or in the articles of incorporation.

(k) Unless the registered agent of the corporation shall provide written consent to the corporation to the receipt of a member's consent, request, demand, or notice by electronic transmission under this chapter, delivery made to a corporation's registered office shall be made by hand or by certified or registered mail or statutory overnight delivery, return receipt requested.

(l) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this Code section or other provisions of this chapter, those requirements govern. (Code 1981, § 14-3-141, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2004, p. 508, § 22.)

The 2004 amendment, effective July 1, 2004, inserted "or by electronic transmission" in the middle of subsection (a); in subsection (b), substituted "electronic transmission" for "telegraph, teletype" in the first sentence, substituted "impracticable, notice may be" for "likely to prove impracticable in particular cases, notice may in addition be" in the second sentence, and added the third sentence; deleted the parentheses in subsection (d); substituted "subsections (c) and (h)" for "subsection (c)" in subsection (e); added subsections (h) through (k); and redesignated former subsection (h) as present subsection (l).

Part 5

Court-Ordered Meetings

14-3-160. Authority of court to order meetings; notice; validity of meeting or vote.

(a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the Attorney General, the superior court may order that such a meeting be called or that a ballot in writing or by electronic transmission or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(b) The court shall, in an order issued pursuant to this Code section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, or this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this Code section the court may determine who the members or directors are.

(c) The order issued pursuant to this Code section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(d) Whenever practical, any order issued pursuant to this Code section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this Code section; provided, however, that an order under this Code section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this Code section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter. (Code 1981, § 14-3-160, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 23.)

The 2004 amendment, effective July 1, 2004, substituted "ballot in writing or by electronic transmission" for "written ballot" near the end of subsection (a).

Part 6

Powers of Attorney General

14-3-170. Powers of Attorney General over unlawful assignment of corporate assets; dissolution of corporation; investigative and subpoena powers.

(a) The Attorney General may petition the superior court:

(1) To enjoin the proposed unlawful conveyance, transfer, or assignment of assets of a corporation described in paragraph (2) of subsection (a) of Code Section 14-3-1302 in situations in which the transferee knew of its unlawfulness;

(2) To set aside the unlawful conveyance, transfer, or assignment of assets of a corporation described in paragraph (2) of subsection (a) of Code Section 14-3-1302 in situations in which the transferee knew of its unlawfulness;

(3) To dissolve a corporation that:

(A) Obtained its articles of incorporation through fraud; or

(B) Has continued to exceed or abuse the authority conferred upon it by law; or

(4) To compel accounting and restitution or other appropriate relief for violation of Code Sections 14-3-830, 14-3-842, 14-3-860 through 14-3-864, or 14-3-1301.

(b) In connection with any such proceeding or proposed proceeding, the Attorney General shall have the same power to investigate and issue subpoenas as he or she has with respect to investigations authorized under Code Section 45-15-17. (Code 1981, § 14-3-170, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 66.)

The 2004 amendment, effective July 1, 2004, substituted "he or she" for "he" near the end of subsection (b).

PART 7

RELIGIOUS CORPORATIONS DOCTRINE

14-3-180. Construction of chapter when religious doctrine inconsistent.

JUDICIAL DECISIONS

Construction with O.C.G.A. § 14-3-101. — Georgia Nonprofit Corporate Code, O.C.G.A. § 14-3-101 et seq., can be used to resolve certain controversies involving religious institutions, under O.C.G.A. §§ 14-3-180 and 14-5-40 et seq. Waverly Hall Baptist Church, Inc. v. Branham, 276 Ga. App. 818, 625 S.E.2d 23 (2005).

ARTICLE 2

INCORPORATION

14-3-202.1. Publication of notice of intent to file articles of incorporation.

Code Section 14-2-201.1 shall apply equally to the organization of corporations under this chapter, except that the notice to the publisher of the newspaper shall be in substantially the following form:

"NOTICE OF INCORPORATION

Notice is given that articles of incorporation which incorporate _____ (name of corporation) have been delivered to the Secretary of State for filing in accordance with the Georgia Nonprofit Corporation Code. The initial registered office of the corporation is located at _____ (address of registered office) and its initial registered agent at such address is _____ (name of agent)." (Code 1981, § 14-3-202.1, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 24.)

The 2004 amendment, effective July 1, 2004, in the notice, substituted "INCORPORATION" for "INTENT TO INCORPORATE" in the title, deleted "will" preceding "incorporate", substituted "have been" for "will be", substituted "is located" for "will be located", and added "(name of agent)" at the end.

14-3-205. Organizational meeting.

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(A) To elect directors and complete the organization of the corporation; or

(B) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more consents in writing or by electronic transmission describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state or in accordance with Code Section 14-3-821. (Code 1981, § 14-3-205, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 25.)

The 2004 amendment, effective July 1, 2004, substituted "consents in writing or by electronic transmission" for "written consents" near the end of subsection (b).

ARTICLE 3

PURPOSES AND POWERS

14-3-304. Ultra vires.

(a) Except as provided in subsection (b) of this Code section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) In a proceeding by a member against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the Attorney General under Code Section 14-3-1430.

(c) In a member's proceeding under paragraph (1) of subsection (b) of this Code section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act. (Code 1981, § 14-3-304, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 26.)

The 2004 amendment, effective July 1, 2004, substituted "Code Section 14-3-1430" for "Code Section 14-2-1430" at the end of paragraph (b)(3).

14-3-305. Nonprofit defined; rights; director's role; reporting.

(a) As used in this Code section, the term "nonprofit" means any corporation which is formed, created, or operated by or on behalf of a hospital authority.

(b) Nonprofits shall have all of the rights, powers, benefits, and purposes granted to other corporations under this chapter and shall not be subject to any restrictions contained in Article 4 of Chapter 7 of Title 31, the "Hospital Authorities Law," except as provided in subsections (c) and (d) of this Code section.

(c) A director of a nonprofit shall be subject to the provisions of Code Section 31-7-74.1 with respect to conflicts of interest regarding such nonprofit and the hospital authority which formed, created, or operates such nonprofit, and Code Section 31-7-74.1 shall be deemed to apply to such nonprofit and such hospital authority only for such purpose.

(d) A nonprofit shall be subject to the provisions of Code Section 31-7-90.1 with respect to reporting community benefits provided by such nonprofit and with respect to annual reports by such nonprofit disclosing certain transactions with the nonprofit or with the hospital authority which formed, created, or operates the nonprofit and Code Section 31-7-90.1 shall be deemed to apply to both that nonprofit and that hospital authority only for such purposes.

(e) Nothing in this Code section shall be deemed or construed to affect in any manner the provisions of Code Section 31-7-75.2, Chapter 14 of Title 50, or Article 4 of Chapter 18 of Title 50 or to change existing law as to whether such statutory provisions are applicable to nonprofits. (Code 1981, § 14-3-305, enacted by Ga. L. 1997, p. 1404, § 1; Ga. L. 2004, p. 508, § 27.)

The 2004 amendment, effective July 1, 2004, substituted "corporation" for "nonprofit corporation organized under or subject to this chapter" in subsection (a) and deleted "nonprofit" preceding "corporations" near the beginning of subsection (b).

ARTICLE 4

CORPORATE NAME

14-3-401. Corporate name.

(a) A corporate name:

(1) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd.," or words or abbreviations of like import in a language other than English;

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by its articles of incorporation and by Code Section 14-3-301;

(3) May not contain anything which, in the reasonable judgment of the Secretary of State, is obscene; and

(4) Shall not in any instance exceed 80 characters, including spaces and punctuation.

(b) Except as authorized by subsections (c) and (d) of this Code section, a corporate name must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of an incorporated organization, whether for profit or not for profit, incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under this chapter or Chapter 2 of this title;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(4) The name of a limited partnership or professional association reserved or filed with the Secretary of State under Chapter 9 of this title; and

(5) The name of a limited liability company formed or authorized to transact business in this state.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his or her records from one or more of the names described in subsection (b) of this Code section. The Secretary of State shall authorize use of the name applied for if the other corporation consents to the use in writing and files with the Secretary of State articles of amendment to its articles of incorporation changing its name to a name that is distinguishable upon the

records of the Secretary of State from the name of the applying corporation.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and:

(1) The proposed user corporation has merged with the other corporation;

(2) The proposed user corporation has been formed by reorganization of the other corporation; or

(3) The other domestic or foreign corporation has taken the steps required by this chapter to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the foreign corporation applying to use its former name.

(e) This chapter does not control the use of fictitious or trade names. Issuance of a name under this chapter means that the name is distinguishable for filing purposes on the records of the Secretary of State pursuant to subsection (b) of this Code section. Issuance of a corporate name does not affect the commercial availability of the name. (Code 1981, § 14-3-401, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1995, p. 482, § 9; Ga. L. 2004, p. 508, § 68.)

The 2004 amendment, effective July 1, 2004, substituted "his or her" for "his" in the first sentence of subsection (c).

ARTICLE 5

REGISTERED OFFICE AND REGISTERED AGENT

Part 1

General Provisions

14-3-503. Resignation of registered agent.

(a) A registered agent may resign his or her agency appointment by signing and delivering to the Secretary of State for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) On or before the date of the filing of the statement of resignation, the registered agent shall deliver or mail a written notice of the agent's intention to resign to the chief executive officer, chief financial officer, secretary of the corporation, or a person holding a position comparable to any of the foregoing, as named and at the address shown in the

annual registration, or in the articles of incorporation if no annual registration has been filed.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the earlier of the filing by the corporation of an amendment to its annual registration designating a new registered agent and registered office if also discontinued or the thirty-first day after the date on which the statement was filed. (Code 1981, § 14-3-503, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 68.)

The 2004 amendment, effective July 1, 2004, inserted "or her" in the first sentence of subsection (a).

Part 2

Venue

14-3-510. Venue — Applicable laws; where corporation deemed to reside; corporations with principal office under prior law.

(a) Venue in proceedings against a corporation shall be determined in accordance with the pertinent constitutional and statutory provisions of this state in effect as of July 1, 1991, or thereafter.

(b) Each domestic corporation and each foreign corporation authorized to transact business in this state shall be deemed to reside and to be subject to venue as follows:

(1) In civil proceedings generally, in the county of this state where the corporation maintains its registered office, or if the corporation fails to maintain a registered office, it shall be deemed to reside in the county where its last named registered office or principal office, as shown by the records of the Secretary of State, was maintained;

(2) In actions based on contracts, in that county in this state where the contract to be enforced was made or is to be performed, if the corporation has an office and transacts business in that county;

(3) In actions for damages because of torts, wrong, or injury done, in the county where the cause of action originated, if the corporation has an office and transacts business in that county;

(4) In actions for damages because of torts, wrong, or injury done, in the county where the cause of action originated. If venue is based solely on this paragraph, the defendant shall have the right to remove the action to the county in Georgia where the defendant maintains its principal place of business. A notice of removal shall be filed within 45

days of service of the summons. Upon motion by the plaintiff filed within 45 days of the removal, the court to which the case is removed may remand the case to the original court if it finds that removal is improper under the provisions of this paragraph. Upon the defendant's filing of a notice of removal, the 45 day time period for filing such notice shall be tolled until the remand, the entry of an order by the court determining that the removal is valid, or the expiration of the time period for the plaintiff to file a motion challenging the removal, whichever occurs first; and

(5) In garnishment proceedings, in the county of this state in which is located the corporate office or place of business where the employee who is the defendant in the main action is employed.

(c) Any residences established by this Code section shall be in addition to, and not in limitation of, any other residence that any domestic or foreign corporation may have by reason of other laws.

(d) Whenever this chapter either requires or permits a proceeding to be brought in the county where the registered office of the corporation is maintained, if the proceeding is against a corporation having a principal office as required under a prior general corporation law, the action or proceeding may be brought in the county where the principal office is located. (Code 1981, § 14-3-510, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 28.)

The 2004 amendment, effective July 1, 2004, in the introductory paragraph of subsection (b), substituted "Each" for "For the purpose of determining venue, each" and added "and to be subject to venue as follows" at the end; in paragraph (b)(1), substituted "In civil" for "For purposes of", inserted "of this state", inserted "the corporation maintains", deleted "is maintained" following "office", and deleted "in this state" following "county"; in paragraph (b)(2), substituted "In actions" for "For purposes of proceedings", substituted "this state where" for "which", deleted "sought" following "contract", substituted "the corporation" for "it" and deleted ", and may be sued" following "county" at the end; in paragraph (b)(3), substituted "In actions" for "For purposes of proceedings" at the beginning and deleted "and" from the end; redesignated former paragraph (b)(4) as present paragraph (b)(5); added paragraph (b)(4); and, in present paragraph (b)(5), substituted "In" for "For purposes of" and inserted "of this state" near the beginning.

ARTICLE 6

MEMBERSHIP

PART 1

GENERAL PROVISIONS

14-3-601. Authority to establish criteria or procedures for membership.

(a) The articles or bylaws may establish criteria or procedures for admission of members.

(b) No person shall be admitted as a member without his or her consent. (Code 1981, § 14-3-601, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 68.)

The 2004 amendment, effective July 1, 2004, substituted "his or her" for "his" in subsection (b).

JUDICIAL DECISIONS

Cited in Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-602. Consideration for membership in corporation.

JUDICIAL DECISIONS

Cited in Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-603. Membership not required.

JUDICIAL DECISIONS

Cited in Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

PART 2

RIGHTS AND LIABILITIES OF MEMBERS

14-3-610. Voting rights.

Members as defined in paragraph (22) of Code Section 14-3-140 shall have no voting rights, other than to elect directors, except as specifically provided in the articles or bylaws. All members shall have the same

rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws. Except for the rights specified in Code Sections 14-3-740 through 14-3-747, members of any corporation existing on July 1, 1991, shall be limited to having the same voting and other rights as before such date, until changed by amendment of its articles of incorporation or bylaws. (Code 1981, § 14-3-610, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 29.)

The 2004 amendment, effective July 1, 2004, substituted "paragraph (22)" for "paragraph (20)" in the first sentence, and substituted "Code Sections 14-3-740 through 14-3-747" for "Code Section 14-3-630" in the third sentence.

JUDICIAL DECISIONS

Cited in Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007); Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

Part 3

Termination of Membership

14-3-620. Resignation by member and effect thereof.

(a) Unless otherwise provided by law, a member may resign from membership at any time by delivering notice in writing or by electronic transmission to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date, although the articles or bylaws may require reasonable notice before the resignation is effective.

(b) This Code section shall not relieve the resigning member from any obligation for charges incurred, services or benefits actually rendered, dues, assessments, or fees, or arising from contract, a condition to ownership of land, an obligation arising out of ownership of land, or otherwise, and this Code section shall not diminish any right of the corporation to enforce any such obligation or obtain damages for its breach. (Code 1981, § 14-3-620, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 30.)

The 2004 amendment, effective July 1, 2004, in subsection (a), added "by delivering notice in writing or by electronic transmission to the corporation." at the end of the first sentence and added "A resignation is effective when the notice is delivered unless the notice specifies a later effective date" at the beginning of the second sentence.

ARTICLE 7

MEETINGS

Part 1

General Provisions

14-3-701. Annual meeting.

JUDICIAL DECISIONS

Construction with other law. — No abuse in granting a second faction's motion for an interlocutory injunction to restrain the first faction from attempting to act on behalf of a Vietnamese Buddhist Temple, incorporated as a nonprofit Georgia corporation, or from holding themselves out as officers, directors, or agents of the Temple, as: (1) the Temple's articles of incorporation clearly allowed it to have members; and (2) the court was authorized to find that all members of the Temple were given the requisite notice of the June, 2004 meeting, and that more than 50 percent of the members appeared at the meeting and voted unanimously to elect the second faction to the board. Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-702. Special meetings.

(a) A corporation with members shall hold a special meeting of members:

(1) On call of its board or the person or persons authorized to do so by the articles or bylaws; or

(2) Except as otherwise provided in the articles or bylaws, if the holders of at least 5 percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more demands in writing or by electronic transmission for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under Code Section 14-3-703 or Code Section 14-3-707, the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

(c) If a notice for a special meeting demanded under paragraph (2) of subsection (a) of this Code section is not given pursuant to Code Section 14-3-705 within 30 days after the date the demand or demands in writing or by electronic transmission are delivered to a corporate officer, regardless of the requirements of subsection (d) of this Code section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to Code Section 14-3-705.

(d) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is

stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office or other suitable place.

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by Code Section 14-3-705 may be conducted at a special meeting of members.

(f) Unless otherwise provided in the articles, a demand by a member for a special meeting may be revoked by a written or electronic transmission to that effect by the member received by the corporation prior to the call of the special meeting.

(g) A bylaw provision governing the voting power required to call special meetings is not a quorum or voting requirement. (Code 1981, § 14-3-702, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 31.)

The 2004 amendment, effective July 1, 2004, substituted "demands in writing or by electronic transmission" for "written demands" in paragraph (a)(2); substituted "demand or demands in writing or by electronic transmission" for "written demand or demands" in the middle of subsection (c), and added subsections (f) and (g).

JUDICIAL DECISIONS

Construction with other law. — No abuse in granting a second faction's motion for an interlocutory injunction to restrain the first faction from attempting to act on behalf of a Vietnamese Buddhist Temple, incorporated as a nonprofit Georgia corporation, or from holding themselves out as officers, directors, or agents of the Temple, as: (1) the Temple's articles of incorporation clearly allowed it to have members; and (2) the court was authorized to find that all members of the Temple were given the requisite notice of the June, 2004 meeting, and that more than 50 percent of the members appeared at the meeting and voted unanimously to elect the second faction to the board. Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-703. Court-ordered meetings.

JUDICIAL DECISIONS

Cited in Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-704. Approval of action without meeting.

(a) Unless limited or prohibited by the articles or bylaws, or unless this chapter requires a greater number of affirmative votes, action required or permitted by this chapter to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least a majority of the voting power. The action must be evidenced by one or more consents in writing or by

electronic transmission describing the action taken, signed by those members representing at least a majority of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) No consent in writing or by electronic transmission signed under this Code section shall be valid unless:

(1) The consenting member has been furnished the same material that, under this chapter, would have been required to be sent to members in a notice of a meeting at which the proposed action would have been submitted to the members for action; or

(2) The written consent contains an express waiver of the right to receive the material otherwise required to be furnished.

(c) If not otherwise determined under Code Section 14-3-703 or Code Section 14-3-707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent.

(d) A consent signed under this Code section has the effect of a meeting vote and may be described as such in any document.

(e) Written notice of member approval pursuant to this Code section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this Code section shall be effective ten days after such written notice is given.

(f) An electronic transmission which is transmitted by a member that evidences a member's consent or approval on a ballot, requests or demands an action to be taken by the corporation, or provides notice to the corporation under this chapter shall be deemed to be written, signed, and dated for the purposes of this chapter, provided that any such electronic transmission sets forth or is delivered with information from which the corporation can determine (1) that the electronic transmission was transmitted by the member and (2) the date on which such member transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent, request, demand, or notice was signed. (Code 1981, § 14-3-704, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 32.)

The 2004 amendment, effective July 1, 2004, substituted "consents in writing or by electronic transmission" for "written consents" in the second sentence of subsection (a); added subsection (b); redesignated former subsections (b) through (d) as present subsections (c) through (e), respectively; and added subsection (f).

14-3-705. Notice of meeting.

(a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) of this Code section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided, however, that notice of matters referred to in paragraph (2) of subsection (c) of this Code section must be given as provided in subsection (c) of this Code section.

(c) Notice is fair and reasonable if:

(1) The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten days (or if notice is mailed by other than first-class or registered mail or statutory overnight delivery, 30 days) nor more than 60 days before the meeting date;

(2) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under Code Section 14-3-855, 14-3-863, 14-3-1003, 14-3-1021, 14-3-1103, 14-3-1202, or 14-3-1402; and

(3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Code Section 14-3-707, however, notice of the adjourned meeting must be given under this Code section to the members of record as of the new record date.

(e) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(1) Requested in writing or by electronic transmission to do so by a person entitled to call a special meeting; and

(2) The request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting. (Code 1981, § 14-3-705, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2000, p. 1589, § 4; Ga. L. 2004, p. 508, § 33.)

The 2004 amendment, effective July 1, 2004, inserted "or by electronic transmission" in paragraph (e)(1).

JUDICIAL DECISIONS

For purposes of interlocutory injunctive relief, the trial court properly found that the second of two factions controlled a nonprofit corporation. There was evidence that the corporation, a temple, had members, consisting of people who regularly attended the temple and participated in its events; furthermore, there was evidence that the members had been properly notified of an annual meeting and that more than 50 percent of the members appeared at the meeting and voted unanimously to elect the second faction to the board of directors. Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-706. Waiver of notice.

(a) A member may waive any notice required by this chapter, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing or by electronic transmission, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented. (Code 1981, § 14-3-706, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 34.)

The 2004 amendment, effective July 1, 2004, inserted "or by electronic transmission" in the second sentence of subsection (a).

14-3-708. Action taken without meeting.

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a ballot in writing or by electronic transmission to every member entitled to vote on the matter.

(b) A ballot in writing or by electronic transmission shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by ballot in writing or by electronic transmission pursuant to this Code section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by ballot in writing or by electronic transmission shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a ballot in writing or by electronic transmission may not be revoked. (Code 1981, § 14-3-708, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 35.)

The 2004 amendment, effective July 1, 2004, substituted "ballot in writing or by electronic transmission" for "written ballot" throughout this Code section.

Part 2

Voting

14-3-720. Membership list for meeting.

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address of and number of votes each member is entitled to vote at the meeting. Nothing contained in this Code section shall require the corporation to include e-mail addresses or other information for delivery of electronic transmissions on such list.

(b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting: (1) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or upon request or (2) during ordinary business hours at the corporation's principal office or at a reasonable

place identified in the meeting notice in the city where the meeting will be held. In the event that the corporation makes the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to members of the corporation. A member, a member's agent, or a member's attorney is entitled on written demand to inspect and, subject to the limitations of subsection (c) of Code Section 14-3-1602 and Code Section 14-3-1605, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) If the meeting is to be held in person, the corporation shall make the list of members available at the meeting, and any member, a member's agent, or member's attorney is entitled to inspect the list at any time during the meeting or any adjournment. If the meeting is to be held solely by means of remote communication, then the list shall be open to the examination of any member during the duration of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

(d) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b) of this Code section), the superior court, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the members' list does not affect the validity of action taken at the meeting. (Code 1981, § 14-3-720, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 36.)

The 2004 amendment, effective July 1, 2004, added the last sentence in subsection (a); in subsection (b), substituted ": (1) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or upon request or (2) during ordinary business hours" for a comma and added the second sentence; and, in subsection (c), substituted "If the meeting is to be held in person, the" for "The" at the beginning and added the last sentence.

14-3-722. Quorum.

JUDICIAL DECISIONS

For purposes of interlocutory injunctive relief, the trial court properly found that the second of two factions controlled a nonprofit corporation. There was evidence that the corporation, a temple, had members, consisting of people who regularly attended the temple and participated in its events; furthermore, there was evidence that the members had been properly notified of an annual meeting

and that more than 50 percent of the members appeared at the meeting and voted unanimously to elect the second faction to the board of directors. Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-724. Proxies.

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy.

(b) A member or his or her agent or attorney in fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which it can be determined that the member, the member's agent, or the member's attorney in fact authorized the electronic transmission.

(c) An appointment of a proxy is effective when a signed appointment form or electronic transmission of the appointment is received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the member.

(e) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(f) Appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(g) Subject to Code Section 14-3-727 and any express limitation on the proxy's authority appearing on the face of the appointment form or in the electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

(h) Any copy, facsimile transmission, or other reliable reproduction of the writing or electronic transmission created pursuant to subsection (b) of this Code section may be substituted or used in lieu of the original writing or electronic transmission for any and all purposes for which the original writing or electronic transmission could be used, provided

that such copy, facsimile transmission, or other reproduction shall be a complete reproduction of the entire original writing or electronic transmission.

(i) A corporation may adopt bylaws authorizing additional means or procedures for members to exercise rights granted by this Code section. (Code 1981, § 14-3-724, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 37.)

The 2004 amendment, effective July 1, 2004, in subsection (b), in the first sentence, inserted "or his or her agent or attorney in fact", substituted "an electronic transmission" for "an attorney in fact" at the end, and added the second sentence; inserted "a signed appointment form or electronic transmission of the appointment is" in the first sentence of subsection (c); inserted "or in the electronic transmission" in the middle of subsection (g); and added subsections (h) and (i).

14-3-725. Voting requirements for election of directors; cumulative voting.

JUDICIAL DECISIONS

For purposes of interlocutory injunctive relief, the trial court properly found that the second of two factions controlled a nonprofit corporation. There was evidence that the corporation, a temple, had members, consisting of people who regularly attended the temple and participated in its events; furthermore, there was evidence that the members had been properly notified of an annual meeting and that more than 50 percent of the members appeared at the meeting and voted unanimously to elect the second faction to the board of directors. Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-727. Validity of signature on proxy.

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an attorney in fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(3) Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders;

(4) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(5) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member or about the faithfulness or completeness of the reproduction when the original has not been examined.

(d) The corporation and its officer or agent who accept or reject a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this Code section or subsection (b) of Code Section 14-3-724 are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this Code section or subsection (b) of Code Section 14-3-724 is valid unless a court of competent jurisdiction determines otherwise. (Code 1981, § 14-3-727, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 38.)

The 2004 amendment, effective July 1, 2004, added "or about the faithfulness or completeness of the reproduction when the original has not been examined" at the end of subsection (c); and inserted "or subsection (b) of Code Section 14-3-724" in the middle of subsections (d) and (e).

ARTICLE 8

DIRECTORS AND OFFICERS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Liability of Nonprofit Corporation for Engaging in For-Profit Business Activities, 46 POF3d 431.

PART 1

BOARD OF DIRECTORS

14-3-801. Requirement for and duties of board of directors.

JUDICIAL DECISIONS

Church corporation and director were privies. — Trial court did not err in granting a landowner summary judgment in a church's quiet title action because the doctrine of collateral estoppel applied when prior action adjudicated that the director of the church did not have the authority to act on behalf of or to represent the church, but the director did so by directing the filing of the quiet title action; the church and the director were privies because a church corporation could only conduct the church's business and affairs under the direction of the church's board of directors, O.C.G.A. § 14-3-801(b), and the record clearly showed that the director, purporting to control the church corporation as a director, directed the filing of the quiet title lawsuit. Body of Christ Overcoming Church of God, Inc. v. Brinson, 287 Ga. 485, 696 S.E.2d 667 (2010).

Cited in Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-804. Election of directors.

JUDICIAL DECISIONS

For purposes of interlocutory injunctive relief, the trial court properly found that the second of two factions controlled a nonprofit corporation. There was evidence that the corporation, a temple, had members, consisting of people who regularly attended the temple and participated in its events; furthermore, there was evidence that the members had been properly notified of an annual meeting and that more than 50 percent of the members appeared at the meeting and voted unanimously to elect the second faction to the board of directors. Nguyen v. Tran, 287 Ga. App. 888, 652 S.E.2d 881 (2007).

14-3-805. Terms of directors.

JUDICIAL DECISIONS

Failure to properly elect board members. — Trial court erred by concluding that the board of a homeowner's association's failure to follow the procedure for electing new board members was of no possible legal consequence as the trial court's reliance on the Georgia Non-Profit Corporation Code was improper because an issue of fact remained as to whether the association was governed by bylaws in addition to the declaration of covenants. McGee v. Patterson, 323 Ga. App. 103, 746 S.E.2d 719 (2013).

14-3-807. Resignation of directors.

(a) A director may resign at any time by delivering notice in writing or by electronic transmission to the board of directors, its presiding officer, or to the president or secretary, or in such other manner as the articles or bylaws may provide.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date. (Code 1981, § 14-3-807, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 39.)

The 2004 amendment, effective July 1, 2004, substituted "notice in writing or by electronic transmission" for "written notice" near the beginning of subsection (a).

14-3-808. Removal of directors.

JUDICIAL DECISIONS

Applicability to churches. — Deacons of a congregational church were not analogous to directors of a non-profit corporation and could not be removed in accordance with O.C.G.A. § 14-3-808 because the deacons did not exercise corporate power, as the church's bylaws suggested that their role was largely, if not wholly, spiritual. Waverly Hall Baptist Church, Inc. v. Branham, 276 Ga. App. 818, 625 S.E.2d 23 (2005).

Authorized removal of directors. — Nonprofit corporation properly removed members of the corporation's board of directors (board) and officers because the meetings at which the removal was accomplished were held pursuant to Georgia law and the corporate constitution and bylaws; thus, O.C.G.A. §§ 14-3-808 and 14-3-843, and the corporate constitution and bylaws, gave the board authority to remove and replace directors and officers. Harris v. SCLC, Inc., 313 Ga. App. 363, 721 S.E.2d 906 (2011).

14-3-813. Appointment of provisional director in case of deadlock.

(a) If the directors of a corporation are deadlocked in the management of the corporate affairs and the members are unable to break the deadlock and if injury to the corporation is being suffered or is threatened by reason thereof, the superior court may, notwithstanding any provisions of the articles of incorporation or bylaws of the corporation to the contrary and whether or not an action is pending for an involuntary dissolution of the corporation, appoint a provisional director pursuant to this Code section.

(b) Action for such appointment may be filed by one-half of the directors or by members holding not less than one-third of all the votes entitled to be cast in an election of directors. Notice of such action shall be served upon the directors, other than those who have filed the action, and upon the corporation in the manner provided by law for service of a summons and complaint, and a hearing shall be held not less than ten days after such service is effected. At such hearing all interested persons shall be given an opportunity to be heard.

(c) The provisional director shall be an impartial person who is neither a member nor a creditor of the corporation nor related by consanguinity or affinity within the third degree, as computed accord-

ing to the civil law, to any of the other directors of the corporation or to any judge of the court by which he or she is appointed. The provisional director shall have all the rights and powers of a director and shall be entitled to notice of the meetings of the board of directors and to vote at such meetings until he or she is removed by order of the court or by vote or written consent of a majority of the directors or of members holding a majority of the votes entitled to be cast in an election of directors. He or she shall be entitled to receive such compensation as may be agreed upon between him or her and the corporation; and, in the absence of such agreement, he or she shall be entitled to such compensation as shall be fixed by the court. (Code 1981, § 14-3-813, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, §§ 66, 67.)

The 2004 amendment, effective July 1, 2004, throughout subsection (c), substituted "he or she" for "he" and substituted "him or her" for "him".

Part 2

Meetings and Action of the Board

14-3-821. Action taken without meeting.

(a) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken in accordance with subsection (b) of this Code section.

(b) Action taken without a meeting shall be taken by all members of the board, unless the articles or bylaws specifically permit such action to be taken by less than all, but not less than a majority of the board. The action must be evidenced by one or more consents in writing or by electronic transmission describing the action taken, signed by no fewer than the required number of directors, and delivered to the corporation for inclusion in the minutes for filing with the corporate records reflecting the action taken. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

(c) Action taken under this Code section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(d) A consent signed and delivered by a director under this Code section has the effect of a meeting vote and may be described as such in any document. (Code 1981, § 14-3-821, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 40.)

The 2004 amendment, effective July 1, 2004, in subsection (b), substituted "consents in writing or by electronic transmission" for "written consents" in the sec-

ond sentence and added the last sentence; and inserted "and delivered by a director" near the beginning of subsection (d).

14-3-823. Waiver of notice.

(a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this Code section, the waiver must be in writing or by electronic transmission, signed by the director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. (Code 1981, § 14-3-823, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, §§ 41, 67, 68.)

The 2004 amendment, effective July 1, 2004, inserted "or by electronic transmission" near the middle of the second sentence of subsection (a) and substituted "him or her" for "him" twice in subsection (b).

Part 4

Officers

14-3-841. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the articles or bylaws or, to the extent consistent with the articles or bylaws, the duties and authority prescribed by the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers. Unless the articles, bylaws, or a resolution of the board of directors of the corporation provides otherwise, the chief executive officer or the president if no person has been designated as chief executive officer of the corporation shall have authority to conduct all ordinary business on behalf of the corporation and may execute and deliver on behalf of the corporation any contract, conveyance, or similar document not requiring approval by the board of directors or members as provided in this chapter. (Code 1981, § 14-3-841, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 42.)

The 2004 amendment, effective July 1, 2004, added the last sentence.

14-3-842. Standards of conduct for officers.

Unless a different standard is prescribed by law:

(1) An officer with discretionary authority shall discharge his or her duties under that authority:

(A) In a manner he or she believes in good faith to be in the best interests of the corporation; and

(B) With the care an ordinarily prudent person in a like position would exercise under similar circumstances;

(2) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(A) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(B) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence;

(3) In the instances described in paragraph (2) of this Code section, an officer is not entitled to rely if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (2) of this Code section unwarranted; and

(4) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer performed the duties of his or her office in compliance with this Code section. (Code 1981, § 14-3-842, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, §§ 66, 68.)

The 2004 amendment, effective July 1, 2004, throughout this Code section, substituted "he or she" for "he" and substituted "his or her" for "his".

14-3-843. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice in writing or by electronic transmission to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(b) A board may remove any officer at any time with or without cause.

(c) Unless otherwise provided in the articles or bylaws, any vacancies in the corporation's officers may be filled by the board. (Code 1981, § 14-3-843, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 43.)

The 2004 amendment, effective July 1, 2004, inserted "in writing or by electronic transmission" in the middle of the first sentence.

JUDICIAL DECISIONS

Authorized removal of officers. — Nonprofit corporation properly removed members of the corporation's board of directors (board) and officers because the meetings at which the removal was accomplished were held pursuant to Georgia law and the corporate constitution and bylaws; thus, O.C.G.A. §§ 14-3-808 and 14-3-843, and the corporate constitution and bylaws, gave the board authority to remove and replace directors and officers. Harris v. SCLC, Inc., 313 Ga. App. 363, 721 S.E.2d 906 (2011).

PART 5

INDEMNIFICATION

14-3-856. Indemnification of officers, employees, and agents.

(a) A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

(1) To the same extent as a director; and

(2) If he or she is not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for liability arising out of conduct that constitutes:

(A) Appropriation, in violation of his or her duties, of any business opportunity of the corporation;

(B) Acts or omissions which involve intentional misconduct or a knowing violation of law;

(C) The types of liability set forth in Code Section 14-3-831; or

(D) Receipt of an improper personal benefit.

(b) The provisions of paragraph (2) of subsection (a) of this Code section shall apply to an officer who is also a director if the sole basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under Code Section 14-3-852, and may

apply to a court under Code Section 14-3-854 for indemnification or advances for expenses, in each case to the same extent to which a director may be entitled to indemnification or advances for expenses under those provisions.

(d) A corporation may also indemnify and advance expenses to an employee or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract. (Code 1981, § 14-3-856, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1994, p. 97, § 14; Ga. L. 1997, p. 1165, § 14; Ga. L. 2004, p. 508, § 44.)

The 2004 amendment, effective July 1, 2004, substituted "Code Section 14-3-831" for "Code Section 14-2-832" at the end of subparagraph (a)(2)(C).

14-3-858. Applicability of indemnification provisions.

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification or advance funds to pay for or reimburse expenses consistent with this part. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with Code Section 14-3-853 to the fullest extent permitted by law, unless the provision specifically provides otherwise. Any such provision existing on July 1, 1991, shall be valid to the extent it does not provide for broader indemnification than is allowed under this part.

(b) Any provision pursuant to subsection (a) of this Code section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors, members, shareholders, partners, or, in the case of limited liability companies, members or managers of a predecessor of the corporation or other entity in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by paragraph (3) of Code Section 14-3-1105.

(c) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

(d) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his or

her appearance as a witness in a proceeding at a time when he or she is not a party.

(e) Except as expressly provided in Code Section 14-3-856, this part does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

(f) The provisions of this part may be incorporated by reference into a corporation's articles of incorporation, bylaws, or a resolution of its members or board of directors. In such case, any such provision shall subsequently be deemed amended to conform with any amendments to this part, unless such provision otherwise expressly provides. (Code 1981, § 14-3-858, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1992, p. 6, § 14; Ga. L. 1997, p. 1165, § 14; Ga. L. 2004, p. 508, § 45.)

The 2004 amendment, effective July 1, 2004, substituted "members" for "shareholders" near the middle of the first sentence of subsection (a); and substituted "directors, members," for "directors or" near the middle of the last sentence of subsection (b).

Part 6

Conflicting Interest Transactions

14-3-861. Transactions not subject to being enjoined, set aside, or other sanctions.

(a) A transaction effected or proposed to be effected by a corporation (or by a subsidiary of the corporation or by any other entity in which the corporation has a controlling interest) that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in an action under the laws of this state by a member or by or in the right of the corporation or any other person who otherwise has standing, on the ground of an interest in the transaction of a director or any person with whom or which he or she has a personal, economic, or other association.

(b) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in an action under the laws of this state by a member or by or in the right of the corporation or any other person who otherwise has standing, on the ground of an interest in the transaction of the director or any person with whom or which he or she has a personal, economic, or other association, if:

(1) Directors' action respecting the transaction was at any time taken in compliance with Code Section 14-3-862;

(2) Members' action respecting the transaction was at any time taken in compliance with Code Section 14-3-863;

(3) Action by the superior court respecting the transaction was at any time taken in compliance with Code Section 14-3-864; or

(4) The transaction, judged in the circumstances at the time of commitment, is established to have been fair to the corporation. (Code 1981, § 14-3-861, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 66.)

The 2004 amendment, effective July 1, 2004, substituted "he or she" for "he" throughout this Code section.

14-3-862. Directors' action after disclosure of conflict or abstention by interested director.

(a) Directors' action respecting a transaction is effective for purposes of paragraph (1) of subsection (b) of Code Section 14-3-861 if the transaction received the affirmative vote of a majority (but not less than two) of those qualified directors on the board of directors or on a duly empowered committee thereof who voted on the transaction after either required disclosure to them (to the extent the information was not known by them) or compliance with subsection (b) of this Code section.

(b) If a director has a conflicting interest respecting a transaction, but neither he or she nor a related person of the director specified in subparagraph (A) of paragraph (3) of Code Section 14-3-860 is a party thereto, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director cannot, consistent with that duty, make the disclosure contemplated by subparagraph (B) of paragraph (4) of Code Section 14-3-860, then disclosure is sufficient for purposes of subsection (a) of this Code section if the director:

(1) Discloses to the directors voting on the transaction the existence and nature of his or her conflicting interest and informs them of the character of and limitations imposed by that duty prior to their vote on the transaction; and

(2) Plays no part, directly or indirectly, in their deliberations or vote.

(c) A majority (but not less than two) of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this Code section. Directors' action that otherwise complies with this Code section is not affected by the presence or vote of a director who is not a qualified director.

(d) For purposes of this Code section, "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either (1) a conflicting interest respecting the

transaction or (2) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction. (Code 1981, § 14-3-862, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, §§ 66, 68.)

The 2004 amendment, effective July 1, 2004, throughout this Code section, substituted "he or she" for "he" and substituted "his or her" for "his".

14-3-863. Members' action following disclosure of conflict.

(a) Members' action respecting a transaction is effective for purposes of paragraph (2) of subsection (b) of Code Section 14-3-861 if a majority of the votes entitled to be cast by all qualified members were cast in favor of the transaction after (1) notice to members describing the director's conflicting interest transaction, (2) provision of the information referred to in subsection (d) of this Code section, and (3) required disclosure to the members who voted on the transaction (to the extent the information was not known by them).

(b) For purposes of this Code section, "qualified members" means any members entitled to vote with respect to a director's conflicting interest transaction except the director and members that, to the knowledge, before the vote, of the secretary (or other officer or agent of the corporation authorized to tabulate votes) are a related person of the director.

(c) A majority of the votes entitled to be cast by all qualified members constitutes a quorum for purposes of action that complies with this Code section. Subject to the provisions of subsection (d) of this Code section, members' action that otherwise complies with this Code section is not affected by the presence of, or the voting by, members that are not qualified members.

(d) For purposes of compliance with subsection (a) of this Code section, a director who has a conflicting interest respecting the transaction shall, before the members' vote, inform the secretary (or other officer or agent of the corporation authorized to tabulate votes) of the identity of all members that to the knowledge of the director are related persons of the director.

(e) If a members' vote does not comply with subsection (a) of this Code section solely because of a failure of a director to comply with subsection (d) of this Code section, and if the director establishes that this failure did not determine and was not intended by him or her to influence the outcome of the vote, the court may, with or without further

proceedings respecting paragraph (3) of subsection (b) of Code Section 14-3-861, take such action respecting the transaction and the director, and give such effect, if any, to the members' vote, as it considers appropriate in the circumstances. (Code 1981, § 14-3-863, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 67.)

The 2004 amendment, effective July 1, 2004, substituted "him or her" for "him" in subsection (e).

14-3-865. Voidability of conflicting interest transaction.

(a) As used in this Code section, the term:

(1) "Officer" means a person who is not a director and who is holding an office described in the bylaws of the corporation or appointed by the board of directors in accordance with the bylaws of the corporation.

(2) "Officer's conflicting interest transaction" means any transaction, other than a director's conflicting interest transaction as defined in paragraph (2) of Code Section 14-3-860, between a corporation (or a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) and one or more of its officers or between a corporation and a related person of an officer.

(3) "Related person" of an officer shall have the same meaning with respect to an officer that this term has with respect to a director in paragraph (3) of Code Section 14-3-860.

(4) "Required disclosure" with respect to an officer shall have the same meaning as this term has with respect to a director in paragraph (4) of Code Section 14-3-860.

(5) "Time of commitment" shall have the same meaning as in paragraph (5) of Code Section 14-3-860.

(b) No officer's conflicting interest transaction shall be void or voidable solely because the officer is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction.

(c) An officer's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in an action by a member or by or in the right of the corporation, on the ground of an interest in the transaction of the officer or any person with whom or which he or she has a personal, economic, or other association, if:

(1) The transaction was approved by the board of directors after required disclosure;

(2) The transaction was approved by the members after required disclosure;

(3) The action was approved by the superior court in an action to which the Attorney General was a party; or

(4) The transaction, judged in the circumstances at the time of commitment, is established to have been fair to the corporation. (Code 1981, § 14-3-865, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 66.)

The 2004 amendment, effective July 1, 2004, substituted "he or she" for "he" in the introductory paragraph of subsection (c).

ARTICLE 10

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

Part 1

Amendment of Articles of Incorporation

14-3-1006. Restated articles of incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members or any other person.

(b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in Code Section 14-3-1003, 14-3-1030, or 14-3-1041.

(c) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with Code Section 14-3-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendments or other change it would make in the articles or contain or be accompanied by a full and complete summary of any such amendment or other change.

(d) If the board seeks to have the restatement approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy of the restatement that identifies any amendments or other change it would make in the articles or contain or be accompanied by a full and complete summary of any such amendment or other change.

(e) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation, including or accompanied by a certificate setting forth the following information:

(1) Whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or

(2) If the restatement contains an amendment to the articles requiring approval by the members, the information required by Code Section 14-3-1005; and

(3) If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to Code Sections 14-3-1030 and 14-3-1041, a statement that such approval was obtained.

(f) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(g) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including any certificate filed pursuant to subsection (e) of this Code section. (Code 1981, § 14-3-1006, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 46.)

The 2004 amendment, effective July 1, 2004, in subsections (c) and (d), deleted "or summary" following "a copy" near the middle and added "or contain or be accompanied by a full and complete summary of any such amendment or other change" at the end; in the introductory paragraph of subsection (e), inserted "of incorporation" near the beginning, substituted ", including or accompanied by" for "together with" and added "the following information" at the end; and substituted "any certificate filed pursuant to" for "the certificate information required by" near the end of subsection (g).

ARTICLE 11

MERGER

14-3-1101. Definitions; plan of merger.

(a) Subject to the limitations set forth in Code Section 14-3-1102, one or more corporations may merge into another corporation if the plan of merger is approved as provided in Code Section 14-3-1103.

(b) The plan of merger must set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(2) The terms and conditions of the planned merger; and

(3) The manner and basis, if any, of converting the memberships of each corporation into obligations, memberships, or other securities of the surviving or any other corporation or into cash or other property in whole or in part.

(c) The plan of merger may set forth:

(1) Amendments to the articles of incorporation of the surviving corporation; and

(2) Other provisions relating to the merger.

(d) Any of the terms of the plan of merger may be made dependent upon facts ascertainable outside of the plan of merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the plan of merger. As used in this subsection, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. (Code 1981, § 14-3-1101, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1997, p. 1165, § 15; Ga. L. 1998, p. 128, § 14; Ga. L. 2004, p. 508, § 47.)

The 2004 amendment, effective July 1, 2004, rewrote this Code section.

14-3-1102. Merger without court approval; notice to Attorney General; receipt or retention by member of anything resulting from merger.

(a) Without the prior approval of the superior court in a proceeding of which the Attorney General has been given written notice, a corporation described in paragraph (2) of subsection (a) of Code Section 14-3-1302 may merge with a corporation or foreign corporation or other entity, provided that:

(1) The corporation or entity which is the surviving corporation or entity is a corporation or entity described in paragraph (2) of subsection (a) in Code Section 14-3-1302 after the merger; or

(2)(A) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets including good will of the corporation or the fair market value of the corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under subsection (b) of Code Section 14-3-1403 had it dissolved;

(B) It shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condi-

tion occurs by reason of the merger, in accordance with such condition; and

(C) The merger is approved by a majority of directors of the corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation or entity.

(b) At least 30 days before consummation of any merger of a corporation pursuant to paragraph (2) of subsection (a) of this Code section, notice, including a copy of the proposed plan of merger, must be delivered to the Attorney General.

(c) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given notice, no member of a corporation described in paragraph (2) of subsection (a) of Code Section 14-3-1302 may receive or keep anything as a result of a merger other than membership in the surviving corporation or entity. The court shall approve the transaction if it is in the public interest.

(d) For purposes of this Code section, the definitions contained in Code Section 14-3-1108 shall be applicable. (Code 1981, § 14-3-1102, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1997, p. 1165, § 16; Ga. L. 2004, p. 508, § 48.)

The 2004 amendment, effective July 1, 2004, in subsection (a), substituted "corporation" for "domestic" in the introductory paragraph and deleted the parentheses in subparagraph (a)(2)(A); and added subsection (d).

14-3-1103. Approval of plan of merger by members or directors; abandonment of plan.

(a) Unless this chapter, the articles, the bylaws, or the board of directors or members acting pursuant to subsection (c) of this Code section require a greater vote or voting by class, a plan of merger to be authorized must be approved:

(1) By the board;

(2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by Code Section 14-3-1030 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (b) of Code Section 14-3-822. The notice must

also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Code Section 14-3-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by consent or ballot in writing or electronic transmission, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under Code Section 14-3-1004 or 14-3-1022. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors. (Code 1981, § 14-3-1103, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 49.)

The 2004 amendment, effective July 1, 2004, in the introductory paragraph of subsection (a), deleted the parentheses and substituted "authorized" for "adopted" near the end; and substituted "consent or ballot in writing or electronic transmission" for "written consent or written ballot" near the middle of the first sentence in subsection (e).

14-3-1104. Articles of merger; publication of notice of merger.

(a) After a plan of merger is approved by the board of directors, and, if required by Code Section 14-3-1103, by the members and any other persons, the surviving corporation or entity shall deliver to the Secretary of State for filing articles of merger setting forth:

(1) The plan of merger;

(2) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(3) If approval by members was required:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;

(4) If approval of the plan by some person or persons other than the members or the board is required pursuant to paragraph (3) of subsection (a) of Code Section 14-3-1103, a statement that the approval was obtained; and

(5) If approval of the shareholders of one or more corporations or entities party to the merger was required, a statement that the merger was duly approved by the shareholders.

(b) In lieu of filing articles of merger that set forth the plan of merger, the surviving corporation or entity may deliver to the Secretary of State for filing a certificate of merger which sets forth:

(1) The name and state of incorporation of each corporation or entity which is merging and the name of the surviving corporation or entity into which each other corporation or entity is merging;

(2) Any amendments to the articles of incorporation or governing agreements of the surviving corporation or entity;

(3) That the executed plan of merger is on file at the principal place of business of the surviving corporation or entity, stating the address thereof;

(4) That a copy of the plan of merger will be furnished by the surviving corporation or entity, on request and without cost, to any member or shareholder of any corporation or entity that is a party to the merger;

(5) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(6) If approval by members was required:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;

(7) If approval of the plan by some person or persons other than the members or the board is required pursuant to paragraph (3) of subsection (a) of Code Section 14-3-1103, a statement that the approval was obtained; and

(8) If approval of the shareholders of one or more corporations or entities party to the merger was required, a statement that the merger was duly approved by the shareholders.

(c) Unless a delayed effective date is specified, a merger takes effect when the articles or certificate of merger is filed.

(d) For purposes of this Code section, the definitions contained in Code Section 14-3-1108 shall be applicable. (Code 1981, § 14-3-1104, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1997, p. 1165, § 17; Ga. L. 2004, p. 508, § 50.)

The 2004 amendment, effective July 1, 2004, rewrote this Code section.

14-3-1104.1. Required filing of notice of merger.

(a) Together with the articles or certificate of merger, the surviving corporation or entity shall deliver to the Secretary of State an undertaking which may appear in the articles or certificate of merger or be set

forth in a letter or other instrument executed by an officer or any person authorized to act on behalf of such corporation or entity that the request for publication of a notice of filing the articles or certificate of merger and payment therefor will be made as required by subsection (b) of this Code section.

(b) No later than the next business day after filing the articles or certificate of merger, the surviving corporation or entity shall mail or deliver to the publisher of a newspaper which is the official organ of the county where the registered office of the surviving corporation or entity is to be located, if the surviving corporation or entity will be required to maintain a registered office in Georgia, or where the registered office of the merging corporation or entity was located prior to the merger in any other case, or which is a newspaper of general circulation published within such county whose most recently published annual statement of ownership and circulation reflects a minimum of 60 percent paid circulation a request to publish a notice in substantially the following form:

"NOTICE OF MERGER

Notice is given that articles or a certificate of merger which will effect a merger by and between (or among) _____ (name and state of incorporation or organization of each constituent corporation or entity) will be delivered to the Secretary of State for filing in accordance with the Georgia Nonprofit Corporation Code. The name of the surviving corporation (or other entity) in the merger will be _____, a corporation (or other entity) incorporated (organized pursuant to the laws of) in the State of _____. The registered office of such corporation (name of type of entity) (is) (will be) located at _____ (address of registered office) and its registered (agent) (agents) at such address (is) (are) _____ (name or names of agent or agents)."

The request for publication of the notice shall be accompanied by a check, draft, or money order in the amount of $40.00 in payment of the cost of publication. The notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper. Failure on the part of the surviving corporation or entity to mail or deliver the notice or payment therefor or failure on the part of the newspaper to publish the notice in compliance with this subsection shall not invalidate the merger.

(c) For purposes of this Code section, the definitions contained in Code Section 14-3-1108 shall be applicable. (Code 1981, § 14-3-1104.1, enacted by Ga. L. 2004, p. 508, § 51.)

Effective date. — This Code section became effective July 1, 2004.

14-3-1105. Effect of merger.

(a) When a merger governed by this chapter takes effect:

(1) Every other corporation or entity party to the merger merges into the surviving corporation or entity and the separate existence of every corporation except the surviving corporation or entity ceases;

(2) The title to all real estate and other property owned by, and every contract right possessed by, each corporation or entity party to the merger is vested in the surviving corporation or entity without reversion or impairment, without further act or deed, and without any conveyance, transfer, or assignment having occurred, subject to any and all conditions to which the property was subject prior to the merger;

(3) The surviving corporation or entity has all liabilities and obligations of each corporation or entity party to the merger;

(4) A proceeding pending against any corporation or entity party to the merger may be continued as if the merger did not occur or the surviving corporation or entity may be substituted in the proceeding for the corporation or entity whose existence ceased; and

(5) The articles of incorporation and bylaws or governing agreements of the surviving corporation or entity are amended to the extent provided in the plan of merger.

(b) For purposes of this Code section, the definitions contained in Code Section 14-3-1108 shall be applicable. (Code 1981, § 14-3-1105, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1997, p. 1165, § 18; Ga. L. 2004, p. 508, § 52.)

The 2004 amendment, effective July 1, 2004, designated the existing provisions as subsection (a); in subsection (a), inserted "governed by this chapter" in the introductory paragraph, in paragraph (a)(2), inserted ", and every contract right possess by," and inserted ", without further act or deed, and without any conveyance, transfer, or assignment having occurred," near the middle, and inserted "or governing agreements" near the middle of paragraph (a)(5); and added subsection (b).

14-3-1106. Merger with foreign corporation.

(a) Except as provided in Code Section 14-3-1102, one or more foreign corporations or foreign business corporations may merge with one or more corporations if:

(1) The merger is permitted by the law of the state or country under whose law each foreign corporation or foreign business corpo-

ration is incorporated and each foreign corporation or foreign business corporation complies with that law in effecting the merger;

(2) The foreign corporation or foreign business corporation complies with Code Sections 14-3-1104 and 14-3-1104.1 if it is the surviving corporation of the merger; and

(3) Each corporation complies with the applicable provisions of Code Sections 14-3-1101 through 14-3-1103 and, if it is the surviving corporation of the merger, with Code Sections 14-3-1104 and 14-3-1104.1.

(b) Upon the merger taking effect, the surviving foreign corporation or foreign business corporation, if it does not have a registered agent in this state, shall be deemed to have appointed the Secretary of State as its registered agent for service of process in a proceeding to enforce any obligation of a domestic corporation party to the merger, until such time as it appoints a registered agent in this state. (Code 1981, § 14-3-1106, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 52.)

The 2004 amendment, effective July 1, 2004, in subsection (a), in the introductory paragraph, inserted "or foreign business corporation" throughout this subsection, substituted "corporations or foreign business" for "business or nonprofit" and deleted "domestic nonprofit" following "or more", substituted "Code Sections 14-3-1104 and 14-3-1104.1" for "Code Section 14-3-1104" near the beginning of paragraph (a)(2) and at the end of paragraph (a)(3); and inserted "foreign corporation or foreign business" near the beginning of subsection (b).

14-3-1107. Effect of merger on bequest, devise, or other transfer of property.

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation or entity and that takes effect or remains payable after the merger, inures to the surviving corporation or entity unless the will or other instrument otherwise specifically provides. (Code 1981, § 14-3-1107, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 52.)

The 2004 amendment, effective July 1, 2004, inserted "or entity" twice in this Code section.

14-3-1108. Definitions; merger with foreign corporations; requirements.

(a) As used in this Code section and in Code Section 14-3-1107, the term:

(1) "Entity" includes any business corporation or foreign business corporation, domestic or foreign limited liability company, domestic or foreign joint-stock association, or domestic or foreign limited partnership.

(2) "Governing agreements" includes the articles of incorporation and bylaws of a business corporation, foreign business corporation, corporation or foreign corporation, articles of association or trust agreement or indenture and bylaws of a joint-stock association, articles of organization and operating agreement of a limited liability company, and the certificate of limited partnership and limited partnership agreement of a limited partnership, and agreements serving comparable purposes under the laws of other states or jurisdictions.

(3) "Joint-stock association" includes any association of the kind commonly known as a joint-stock association or joint-stock company and any unincorporated association, trust, or enterprise having members or having outstanding shares of stock or other evidences of financial and beneficial interest therein, whether formed by agreement or under statutory authority or otherwise, but shall not include a corporation, partnership, limited liability partnership, limited liability company, or nonprofit organization. A joint-stock association as defined in this paragraph may be one formed under the laws of this state, including a trust created pursuant to Article 2 of Chapter 12 of Title 53, or one formed under or pursuant to the laws of any other state or jurisdiction.

(4) "Limited liability company" includes limited liability companies formed under the laws of this state or of any other state or territory or the District of Columbia, unless the laws of such other state or jurisdiction forbid the merger of a limited liability company with a corporation.

(5) "Limited partnership" includes limited partnerships formed under the laws of this state or of any other state or territory or the District of Columbia, unless the laws of such other state or jurisdiction forbid the merger of a limited partnership with a corporation.

(6) "Share" includes shares, memberships, financial or beneficial interests, units, or proprietary or partnership interests in a business corporation or a foreign business corporation, limited liability company, joint-stock association, or a limited partnership but does not include debt obligations of any entity.

(7) "Shareholder" includes every member of a limited liability company or a joint-stock association that is a party to a merger or holder of a share or other evidence of financial or beneficial interest therein.

(b) Subject to the limitations set forth in Code Section 14-3-1102, one or more corporations may merge with one or more entities, except an entity formed under the laws of a state or jurisdiction which forbids a merger with a corporation. The corporation or corporations and one or more entities may merge into a single corporation or other entity, which may be any one of the constituent corporations or entities.

(c) The board of directors of each merging corporation and the appropriate body of each entity, in accordance with its governing agreements and the laws of the state or jurisdiction under which it was formed, shall adopt a plan of merger in accordance with each corporation's and entity's governing agreements and the laws of the state or jurisdiction under which it was formed, as the case may be.

(d) The plan of merger:

(1) Must set forth:

(A) The name of each corporation and entity planning to merge and the name of the surviving corporation or entity into which each other corporation and entity plans to merge;

(B) The terms and conditions of the merger; and

(C) The manner and basis of converting the shares of each corporation and the shares, memberships, or financial or beneficial interests or units in each of the entities into shares, obligations, or other securities of the surviving or any other corporation or entity or into cash or other property in whole or in part; and

(2) May set forth:

(A) Amendments to the articles of incorporation or governing agreements of the surviving corporation or entity; and

(B) Other provisions relating to the merger.

(e) Any of the terms of the plan of merger may be made dependent upon facts ascertainable outside of the plan of merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the plan of merger. As used in this subsection, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(f) In the case of any entity, the plan of merger shall be approved in the manner required by its governing agreements and in compliance with any applicable laws of the state or jurisdiction under which it was formed. In addition, each of the corporations shall comply with all other provisions of this chapter which relate to the merger of corporation. Each other entity shall comply with all other provisions of its governing

agreements and all provisions of the laws, if any, of the state or jurisdiction in which it was formed which relate to the merger.

(g) Each merging corporation shall comply with the requirements of Code Section 14-3-1104. (Code 1981, § 14-3-1108, enacted by Ga. L. 2004, p. 508, § 53; Ga. L. 2005, p. 60, § 14/HB 95; Ga. L. 2010, p. 579, § 10/SB 131.)

Effective date. — This Code section became effective July 1, 2004.

The 2005 amendment, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraphs (a)(3) and (a)(6).

The 2010 amendment, effective July 1, 2010, in paragraph (a)(3), substituted "otherwise, but shall" for "otherwise but does" near the end of the first sentence and substituted "Article 2" for "Article 3" in the middle of the last sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "include" was substituted for "includes" near the end of paragraph (a)(6).

ARTICLE 13

DISTRIBUTIONS

14-3-1302. Exceptions to prohibition against distributions.

(a) A corporation may make distributions to the following:

(1) Organizations whether or not incorporated that are organized and operated for the same or similar purposes as the distributing corporation;

(2) Organizations whether or not incorporated that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder, member, or individual; or

(3) A state or possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia.

(b) Except for corporations described in paragraph (2) of subsection (a) of this Code section, a corporation may repurchase a membership for the consideration that the member paid for his or her membership if, after the purchase is completed:

(1) The corporation would be able to pay its debts as they become due in the normal course of business; and

(2) The corporation's total assets would at least equal the sum of its liabilities. (Code 1981, § 14-3-1302, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 54.)

The 2004 amendment, effective July 1, 2004, in subsection (a), deleted the parentheses in paragraphs (a)(1) and (a)(2) and inserted ", member," near the end of paragraph (a)(2); and inserted "or her" near the end of the introductory paragraph in subsection (b).

ARTICLE 14

DISSOLUTION

Part 1

Voluntary Dissolution

14-3-1401. Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not admitted members entitled to vote on dissolution, has not commenced activities, and has no net assets may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) That:

(A) The corporation has not admitted members entitled to vote on dissolution;

(B) The corporation has not commenced activities; and

(C) The corporation has no net assets;

(4) That no debt of the corporation remains unpaid; and

(5) That a majority of the incorporators or initial directors authorized the dissolution. (Code 1981, § 14-3-1401, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 55; Ga. L. 2005, p. 60, § 14/HB 95.)

The 2004 amendment, effective July 1, 2004, substituted "and" for "or" at the end of subparagraph (3)(B).

The 2005 amendment, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (3)(C).

14-3-1402. Proposal of dissolution and approval thereof.

(a) A corporation's board of directors may propose dissolution for submission to the members, if there are members entitled to vote thereon as follows:

(1) For a proposal to dissolve to be adopted:

(A) The board of directors must recommend dissolution to the members unless the board of directors elects, because of a conflict of interest or other special circumstances, to make no recommendation and communicates the basis for its determination to the members; and

(B) The members entitled to vote must approve the proposal to dissolve as provided in paragraph (4) of this subsection;

(2) The board of directors may condition its submission of the proposal for dissolution on any basis;

(3) The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with Code Section 14-3-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation;

(4) Unless the articles of incorporation, the bylaws, or the board of directors acting pursuant to paragraph (2) of this subsection requires a greater vote or vote by classes, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal; and

(5) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(b) Unless the articles of incorporation or bylaws requires a greater vote, if the corporation does not have members entitled to vote on dissolution, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with Code Section 14-3-822. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The plan of dissolution shall conform to the requirements of Code Section 14-3-1403 and shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid. (Code 1981, § 14-3-1402, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 56.)

The 2004 amendment, effective July 1, 2004, in subsection (a), substituted "as follows:" for a period at the end of the introductory paragraph, substituted "paragraph (4) of this subsection;" for "subsection (e) of this Code section." at the end of subparagraph (a)(1)(B), substituted semicolons for periods at the end of paragraphs (a)(2) through (a)(4), and, in paragraph (a)(4), deleted the parentheses near the middle of that paragraph and added "and" at the end.

14-3-1406. Effect of notice of intent to dissolve.

JUDICIAL DECISIONS

Cited in Williams v. Martin Lakes Condo. Ass'n, 284 Ga. App. 569, 644 S.E.2d 424 (2007).

14-3-1408. Request for presentation of claims; enforcement of claims; when claims barred.

(a) A corporation that has filed a notice of intent to dissolve may include in the notice of its intent to dissolve published under Code Section 14-3-1404.1 a request that persons with claims against the corporation present them in accordance with subsection (b) of this Code section.

(b) The request must:

(1) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(2) State that, except for claims that are contingent at the time of the filing of the notice of intent to dissolve or that arise after the filing of the notice of intent to dissolve, a claim against the corporation not otherwise barred will be barred unless a proceeding to enforce the claim is commenced within two years after publication of the notice.

(c) If a corporation that has filed a notice of intent to dissolve publishes a newspaper notice containing the information specified in subsection (b) of this Code section, all claims not otherwise barred will be barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice except:

(1) Claims that are contingent at the time of the filing of the notice of intent to dissolve; and

(2) Claims that arise after the filing of the notice of intent to dissolve.

(d) If a corporation in dissolution publishes a newspaper notice containing the information specified in subsection (b) of this Code section, a claim against the corporation not otherwise barred of a claimant whose claim is contingent or based on an event occurring after the filing of the notice of intent to dissolve is barred against the corporation, its members, officers, directors, and distributees unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the date of filing of articles of dissolution or five years after the date of publication in accordance with subsection (b) of this Code section, whichever is later.

(e) Subject to the provisions of this Code section, a claim against a corporation in dissolution or against a dissolved corporation may be enforced under this Code section:

(1) Against the corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a distributee of the corporation to the extent of such distributee's pro rata share of the claim or the corporate assets distributed to him or her in liquidation, whichever is less, but a distributee's total liability for all claims under this Code section may not exceed the total amount of assets distributed to him or her. (Code 1981, § 14-3-1408, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 57.)

The 2004 amendment, effective July 1, 2004, in paragraph (e)(2), inserted "or her" twice and substituted "such distributee's" for "his" near the middle.

14-3-1409. Articles of dissolution.

(a) If a notice of intent to dissolve under Code Section 14-3-1404 has not been revoked, when all known debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision made therefor, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date on which a notice of intent to dissolve was filed and a statement that it has not been revoked;

(3) A statement that all known debts, liabilities, and obligations of the corporation have been paid and discharged, or that adequate provision has been made therefor;

(4) A statement that all remaining property and assets of the corporation have been distributed in accordance with the plan of dissolution, or that such property and assets have been deposited with the Office of the State Treasurer as provided in Code Section 14-3-1440;

(5) A statement that there are no actions pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending action; and

(6) A statement that, if required, it notified the Attorney General of its intent to dissolve.

(b) Upon filing of articles of dissolution the corporation shall cease to exist, except for the purpose of actions or other proceedings, which may

be brought against the corporation by service upon any of its last executive officers named in its last annual registration, and except for such actions as the members, directors, and officers take to protect any remedy, right, or claim on behalf of the corporation, or to defend, compromise, or settle any claim against the corporation, all of which may proceed in the corporate name.

(c) Deeds or other transfer instruments requiring execution after the dissolution of a corporation may be signed by any two of the last officers or directors of the corporation and shall operate to convey the interest of the corporation in the real estate or other property described. (Code 1981, § 14-3-1409, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2001, p. 796, § 4; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" near the end of paragraph (a)(4).

14-3-1409.1. Claims pending prior to dissolution of a corporation.

The dissolution of a corporation in any manner, except by a decree of the superior court when the court has supervised the liquidation of the assets and business of the corporation as provided in Code Sections 14-3-1430 and 14-3-1433, shall not take away or impair any remedy available to such corporation, its directors, officers, or members for any right or claim existing prior to such dissolution if an action or other proceeding thereon is pending on the date of such dissolution or is commenced within two years after the date of such dissolution. Any such action or proceeding by the corporation may be prosecuted by the corporation in its corporate name. The members, directors, and officers shall have the power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. (Code 1981, § 14-3-1409.1, enacted by Ga. L. 2004, p. 508, § 58; Ga. L. 2010, p. 878, § 14/HB 1387.)

Effective date. — This Code section became effective July 1, 2004.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, in the first sentence, substituted "Code Sections" for "Code Section" and substituted "if an action" for "if action".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "corporate" was substituted for "corporation" in the third sentence.

PART 2

ADMINISTRATIVE DISSOLUTION

14-3-1421. Procedure for and effect of administrative dissolution.

JUDICIAL DECISIONS

Applicability. — A condominium resident was properly denied summary judgment, in an action filed by the resident's association for past-due fees and assessments, as the association, despite an administrative dissolution, could legally sue based on a reinstatement of its corporate status, and the case had not been previously settled. Williams v. Martin Lakes Condo. Ass'n, 284 Ga. App. 569, 644 S.E.2d 424 (2007).

Corporation retained title to real property despite administrative dissolution. — Trial court erred by entering a declaratory judgment in favor of a creditor declaring that a church was bound under principles of agency or ratification to the terms of a loan note and security deed a church member executed because there was no evidence that the church authorized the member to enter into a loan transaction on the church's behalf; even though the church was administratively dissolved at the time of the loan transaction, the original church continued the church's corporate existence apart from the nonprofit corporation the church member incorporated, and the original church retained title to the real property described in the security deed given by the nonprofit to the creditor under O.C.G.A. § 14-3-1421(c). Maced. Baptist Church of Atlanta v. LIB Props., 307 Ga. App. 760, 707 S.E.2d 380 (2011).

14-3-1422. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under Code Section 14-3-1421 may apply to the Secretary of State for reinstatement within five years after the effective date of such dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) Either be executed by the registered agent or an officer, director, or shareholder of the corporation, in each case as set forth in the most recent annual registration of the corporation filed with the Secretary of State, or be accompanied by a notarized statement, executed by a person who was an officer, director, or shareholder, or an heir, successor, or assign of a person who was an officer, director, or shareholder, of the corporation at the time that the corporation was administratively dissolved, stating that such person or decedent was an officer, director, or shareholder of the corporation at the time of administrative dissolution and such person has knowledge of and assents to the application for reinstatement;

(4) Contain a statement by the corporation reciting that all taxes owed by the corporation have been paid; and

(5) Be accompanied by the fee required for the application for reinstatement contained in Code Section 14-3-122.

(b) The Secretary of State shall reserve the name of a corporation administratively dissolved under Code Section 14-2-1421 for such corporation's specific use for a period of five years after the effective date of the dissolution or until the corporation is reinstated, whichever is sooner.

(c) If the Secretary of State determines that the application contains the information required by subsection (a) of this Code section and that the information is correct, the Secretary of State shall prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under Code Section 14-3-504.

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(e) This Code section shall apply to all corporations administratively dissolved under Code Section 14-3-1421 or any similar former statute, regardless of the date of dissolution. (Code 1981, § 14-3-1422, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 1995, p. 975, § 2; Ga. L. 1997, p. 1165, § 18.1; Ga. L. 2008, p. 253, § 9/SB 436; Ga. L. 2011, p. 430, § 4/SB 64.)

The 2008 amendment, effective July 1, 2008, in subsection (a), in the introductory language, added "within five years after the effective date of such dissolution" at the end of the first sentence, and substituted "shall" for "must" at the end; in paragraph (a)(3), substituted the present provisions for the former provisions, which read: "State that the name by which the corporation will be known after reinstatement satisfies the requirements of Code Section 14-3-401"; and, in subsection (b), substituted the present provisions for the former provisions, which read: "If the corporation's name no longer satisfies the requirements of Code Section 14-3-401, the corporation shall, as a condition of reinstatement, include in its application for reinstatement the adoption of a corporate name that is available in accordance with Code Section 14-3-401 and that has been reserved pursuant to Code Section 14-3-402. If the application for reinstatement contains a new corporate name, the articles of incorporation shall be deemed to have been amended to change the name of the corporation to the name so adopted."

The 2011 amendment, effective July 1, 2011, substituted the present provisions of paragraph (a)(5) for the former provisions, which read: "Be accompanied by an amount equal to the total annual registration fees and penalties that would have been payable during the periods between dissolution and reinstatement, plus the fee required for the application for reinstatement, and any other fees and penalties payable for earlier periods."

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008).

JUDICIAL DECISIONS

Applicability. — A condominium resident was properly denied summary judgment, in an action filed by the resident's association for past-due fees and assessments, as the association, despite an administrative dissolution, could legally sue based on a reinstatement of its corporate status, and the case had not been previously settled. Williams v. Martin Lakes Condo. Ass'n, 284 Ga. App. 569, 644 S.E.2d 424 (2007).

Corporation retained title to real property despite administrative dissolution. — Trial court erred by entering a declaratory judgment in favor of a creditor declaring that a church was bound under principles of agency or ratification to the terms of a loan note and security deed a church member executed because there was no evidence that the church authorized the member to enter into a loan transaction on the church's behalf; even though the church was administratively dissolved at the time of the loan transaction, the original church continued the church's corporate existence apart from the nonprofit corporation the church member incorporated, and the original church retained title to the real property described in the security deed given by the nonprofit to the creditor under O.C.G.A. § 14-3-1421(c). Maced. Baptist Church of Atlanta v. LIB Props., 307 Ga. App. 760, 707 S.E.2d 380 (2011).

Part 3

Judicial Dissolution

14-3-1430. Grounds for judicial dissolution.

JUDICIAL DECISIONS

Dissolution not warranted. — Dissolution of a homeowner's association was not warranted where, contrary to the co-owner's contentions, the evidence did not establish that the association failed to file proper tax returns or follow proper procedures for notice of meetings; the association, though initially denied tax exempt status, was ultimately granted such status, and the evidence showed that the association stopped making all unauthorized expenditures except for two, one of which it claimed was authorized. Parker v. Clary Lakes Rec. Ass'n, 265 Ga. App. 93, 592 S.E.2d 880 (2004).

14-3-1433. Decree of dissolution.

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in Code Section 14-3-1430 exist, it may enter a decree ordering the corporation dissolved, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it, with the same effect as a notice of intent to dissolve.

(b) After entering the order of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with Code Section 14-3-1406. Winding up the business of a corporation judicially dissolved may include the corporation's proceeding, after the date of the order of dissolution, (1) in accordance with Code Section 14-3-1407 to notify known claimants, and (2) to mail or

deliver, with accompanying payment of the cost of publication, a notice containing the information specified in subsection (b) of Code Section 14-3-1408 for publication. Upon such notice, claims against the dissolved corporation will be limited as specified in Code Sections 14-3-1407 and 14-3-1408 respectively.

(c) When the costs and expenses of dissolution proceedings and all debts, obligations, and liabilities of the corporation have been paid and discharged or provided for and all of its remaining assets distributed to its members or provided for or such assets have been deposited with the Office of the State Treasurer as provided in Code Section 14-3-1440, the court shall enter a decree of dissolution, and upon filing of the decree with the Secretary of State, it shall have the same effect as articles of dissolution. (Code 1981, § 14-3-1433, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2001, p. 796, § 5; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the middle of subsection (c).

Part 4

Assets of Dissolved Corporation

14-3-1440. Deposit of assets with Office of the State Treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Office of the State Treasurer for safekeeping. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited, the Office of the State Treasurer shall pay him or her or his or her representative that amount. After the Office of the State Treasurer has held the unclaimed cash for six months, the Office of the State Treasurer shall pay such cash to the Board of Regents of the University System of Georgia, to be held without liability for profit or interest until a claim for such cash shall be filed with the Office of the State Treasurer by the parties entitled thereto. No such claim shall be made more than six years after such cash is deposited with the Office of the State Treasurer. (Code 1981, § 14-3-1440, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2001, p. 796, § 6; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" throughout this Code section.

ARTICLE 15

FOREIGN CORPORATIONS

PART 1

CERTIFICATE OF AUTHORITY

14-3-1501. Certificate of authority to transact business required.

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this Code section:

(1) Maintaining or defending any action or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(5) Effecting sales through independent contractors;

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;

(7) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

(8) Securing or collecting debts or enforcing any rights in property securing the same;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction not in the course of a number of repeated transactions of a like nature;

(11) Effecting transactions in interstate or foreign commerce;

(12) Serving as trustee, executor, administrator, or guardian, or in like fiduciary capacity, where permitted so to serve by the laws of this state;

(13) Owning directly or indirectly an interest in or controlling directly or indirectly another entity organized under the laws of or transacting business within this state; or

(14) Serving as a manager of a limited liability company organized under the laws of or transacting business within this state.

(c) The list of activities in subsection (b) of this Code section is not exhaustive.

(d) This chapter shall not be deemed to establish a standard for activities which may subject a foreign corporation to taxation or to service of process under any of the laws of this state. (Code 1981, § 14-3-1501, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 59.)

The 2004 amendment, effective July 1, 2004, in subsection (b), substituted "outside" for "without" in paragraph (b)(6), deleted "or" at the end of paragraph (b)(12), added paragraph (b)(13), redesignated former paragraph (b)(13) as present paragraph (b)(14), and substituted "Serving as a manager of a limited liability company organized under the laws of" for "Owning and controlling a subsidiary corporation incorporated in" at the beginning of paragraph (b)(14).

14-3-1503. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of Code Section 14-3-1506;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation;

(4) The mailing address of its principal office;

(5) The address of its registered office in this state and the name of its registered agent at that office; and

(6) The names and respective business addresses of its chief executive officer, chief financial officer, and secretary, or individuals holding similar positions.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly

authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. (Code 1981, § 14-3-1503, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2002, p. 989, § 10; Ga. L. 2004, p. 631, § 14.)

The 2004 amendment, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, substituted "Code Section 14-3-1506" for "Code Section 14-2-1506" at the end of paragraph (a)(1).

14-3-1506. Corporate name of foreign corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of Code Section 14-3-401, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or the name of its state of incorporation to its corporate name for use in this state; or

(2) May use a fictitious or trade name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious or trade name.

(b) Except as authorized by subsections (c) and (d) of this Code section, a corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation, whether for profit or not for profit, incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under this chapter or Chapter 2 of this title;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

(4) The name of a limited partnership or professional association reserved or filed with the Secretary of State under this title.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon his or her records from the name applied for. The Secretary of State shall authorize use of the name applied for if the other corporation files with the Secretary of State articles of amend-

ment to its articles of incorporation changing its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation.

(d) A foreign corporation may use the name (including the fictitious name) of another domestic or foreign corporation whether for profit or not for profit that is used in this state if the other corporation is incorporated or authorized to transact business in this state and:

(1) The foreign corporation has merged with the other corporation;

(2) The foreign corporation has been formed by reorganization of the other corporation; or

(3) The other domestic or foreign corporation has taken the steps required by this chapter to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the foreign corporation applying to use its former name.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of Code Section 14-3-401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of Code Section 14-3-401 and obtains an amended certificate of authority under Code Section 14-3-1504. (Code 1981, § 14-3-1506, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 68; Ga. L. 2005, p. 60, § 14/HB 95.)

The 2004 amendment, effective July 1, 2004, substituted "him or her" for "him" in subsection (c).

The 2005 amendment, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, revised language and punctuation in subsection (a).

14-3-1508. Change of registered office or registered agent of foreign corporation.

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing an amendment to its annual registration that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name of its current registered agent; and

(5) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing an amendment to the annual registration that complies with the requirements of subsection (a) of this Code section. (Code 1981, § 14-3-1508, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, §§ 66, 68.)

The 2004 amendment, effective July 1, 2004, in subsection (b), substituted "him or her" for "him" and substituted "he or she" for "he" twice.

14-3-1509. Resignation of registered agent of foreign corporation.

(a) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Secretary of State for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) On or before the date of filing of the statement of resignation, the registered agent shall deliver or mail a written notice of the agent's intention to resign to the chief executive officer, chief financial officer, or secretary of the corporation, or a person holding a position comparable to any of the foregoing, as named, and at the address shown in the annual registration, or in the articles of incorporation if no annual registration has been filed.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the earlier of the filing by the corporation of an amendment to its annual registration designating a new registered agent and registered office if also discontinued or the thirty-first day after the date on which the statement was filed. (Code 1981, § 14-3-1509, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 60.)

The 2004 amendment, effective July 1, 2004, inserted "or her" near the beginning of the first sentence in subsection (a), deleted ", on or before the date of filing of the statement" following "been filed" at the end of subsection (b), and inserted "the earlier of the filing by the corporation of an amendment to its annual registration designating a new registered agent and registered office if also discontinued or" in the middle of subsection (c).

PART 2

CERTIFICATE OF WITHDRAWAL

14-3-1520. Withdrawal of foreign corporation from state.

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State. A foreign corporation authorized to transact business in this state that merges with and into a domestic corporation pursuant to Code Section 14-3-1106 and is not the surviving corporation in such merger need not obtain a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which a copy of any process served on the Secretary of State under paragraph (3) of this subsection may be mailed under subsection (c) of this Code section; and

(5) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this Code section is service on the foreign corporation. Any party that serves process upon the Secretary of State in accordance with this subsection shall also mail a copy of the process to the chief executive officer, chief financial officer, or the secretary of the foreign corporation, or a person holding a comparable position, at the mailing address set forth under subsection (b) of this Code section. (Code 1981, § 14-3-1520, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 61.)

The 2004 amendment, effective July 1, 2004, added the last sentence in subsection (a).

PART 3

REVOCATION OF CERTIFICATE OF AUTHORITY

14-3-1530. Grounds for revocation.

The Secretary of State may commence a proceeding under Code Section 14-3-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its annual registration to the Secretary of State within 60 days after it is due;

(2) The foreign corporation does not pay within 60 days after they are due any fees, taxes, or penalties imposed by this chapter or other law;

(3) The foreign corporation is without a registered agent or registered office in this state for 60 days or more;

(4) The foreign corporation does not inform the Secretary of State under Code Section 14-3-1508 or 14-3-1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(6) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger. (Code 1981, § 14-3-1530, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 66.)

The 2004 amendment, effective July 1, 2004, substituted "he or she" for "he" in paragraph (5).

14-3-1531. Procedure for and effect of revocation.

(a) If the Secretary of State determines that one or more grounds exist under Code Section 14-3-1530 for revocation of a certificate of authority, he or she shall provide the foreign corporation with written notice of his or her determination by mailing a copy of the notice, by first-class mail, to the foreign corporation at the last known address of its principal office or to the registered agent.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is provided to the corporation, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State as the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Any party that serves process upon the Secretary of State shall also mail a copy of the process to the chief executive officer, chief financial officer, or the secretary of the foreign corporation, or a person holding a comparable position, at its principal office shown in its most recent annual registration or in any subsequent communication received by the Secretary of State from the corporation stating the current mailing address of its principal office, or, if none is on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation. (Code 1981, § 14-3-1531, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, §§ 66, 68.)

The 2004 amendment, effective July 1, 2004, in subsection (a), substituted "he or she" for "he" and substituted "him or her" for "him".

ARTICLE 16

RECORDS AND REPORTS

Part 1

Records

14-3-1602. Members' right to copy and inspect records.

(a) A corporation shall keep a copy of the following records:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by either its members or board of directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(4) Resolutions adopted by either its members or board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(5) The minutes of all meetings of members, executed waivers of notice of meetings, and executed consents, delivered in writing or by electronic transmission, evidencing all actions taken or approved by the members without a meeting, for the past three years;

(6) All communications in writing or by electronic transmission to members generally within the past three years, including the financial statements furnished for the past three years under Code Section 14-3-1620;

(7) A list of the names and business or home addresses of its current directors and officers; and

(8) Its most recent annual registration delivered to the Secretary of State under Code Section 14-3-1622.

(b) A member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in subsection (a) of this Code section if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

(c) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (d) of this Code section and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or the board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this Code section;

(2) Accounting records of the corporation; and

(3) Subject to Code Section 14-3-1605, the membership list.

(d) A member may inspect and copy the records identified in subsection (c) of this Code section only if:

(1) The member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect;

(3) The records are directly connected with this purpose; and

(4) The records are to be used only for the stated purpose.

(e) This Code section does not affect:

(1) The right of a member to inspect records under Code Section 14-3-720 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of this chapter, to compel the production of corporate records for examination. (Code 1981, § 14-3-1602, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 62.)

The 2004 amendment, effective July 1, 2004, in subsection (a), substituted the present provisions of paragraph (a)(5) for the former provisions which read: "The minutes of all meetings of members and records of all actions approved by the members for the past three years;", substituted "communications in writing or by electronic transmission" for "written communications" near the beginning of paragraph (a)(6), and substituted "registration" for "report" near the beginning of paragraph (a)(8).

JUDICIAL DECISIONS

Cited in Park Ridge Condo. Ass'n, Inc. v. Callais, 290 Ga. App. 875, 660 S.E.2d 736 (2008).

14-3-1604. Court-ordered inspection.

Law reviews. — For article, "2008 Annual Review of Case Law Development," see 14 (No. 6) Ga. St. B.J. 28 (2009).

JUDICIAL DECISIONS

Costs. — Under O.C.G.A. § 14-3-1604(c), plaintiff's recovery is limited to those fees and expenses incurred to obtain the relief sought; it is not a blanket

provision to obtain all fees. Park Ridge Condo. Ass'n, Inc. v. Callais, 290 Ga. App. 875, 660 S.E.2d 736 (2008).

After trial court ordered condominium association to allow a member to inspect and copy records, it was error to award the member all attorney fees and expenses under O.C.G.A. § 14-3-1604(c); member was entitled only to those expenses and fees directly incurred in obtaining the order allowing the member to inspect and copy the records. Park Ridge Condo. Ass'n, Inc. v. Callais, 290 Ga. App. 875, 660 S.E.2d 736 (2008).

Part 2

Reports

14-3-1620. Furnishing financial statements to members.

(a) A corporation upon request in writing or by electronic transmission from a member shall furnish that member its latest prepared annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, in reasonable detail as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

(1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year. (Code 1981, § 14-3-1620, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 63.)

The 2004 amendment, effective July 1, 2004, substituted "request in writing or by electronic transmission" for "written demand" at the beginning of the first sentence in subsection (a).

ARTICLE 17

APPLICABILITY

14-3-1701. Corporations as to which chapter applicable and as to which not applicable; corporations existing on July 1, 1991; foreign and interstate commerce.

(a) Subject to the limitations of subsection (b) of this Code section, this chapter shall apply:

(1) To all nonprofit corporations, existing on or formed after July 1, 1991, including nonprofit corporations organized under any prior general corporation law of this state or under Chapter 3 of Title 14 of the Official Code of Georgia Annotated in effect prior to July 1, 1991, that is repealed by this chapter;

(2) To all nonprofit corporations created by special Act of the General Assembly as to which power has been reserved to withdraw the franchise;

(3) To any nonprofit corporation, organization, or association, to the extent that the former general corporation law of this state or any of its provisions or this chapter or any of its provisions specifically have been or shall be made applicable to such corporation, organization, or association; and

(4) To any corporation organized under any statute of this state or if it were originally created by special Act of the General Assembly without reservation of power to withdraw the franchise, if under any prior general corporation law of this state applicable to nonprofit corporations such corporation either has amended its charter or has been a party to a merger or a consolidation, and also to any such corporation which after July 1, 1991, in an amendment to its articles of incorporation or restatement of the articles of incorporation or in a merger or a consolidation, elects to be subject to this chapter. Any such corporation shall have all the rights, privileges, franchises, immunities, and powers and shall be subject to all the duties, liabilities, and disabilities of a corporation to which this chapter applies as well as of the statute or special Act by which such corporation was originally created; but in the event of a conflict between such statute or special Act and this chapter, such statute or special Act shall govern.

(b) This chapter shall not apply:

(1) To corporations organized under a statute of this state other than either this chapter or any prior general corporation law, except to the extent that the former general corporation law of this state

applicable to nonprofit corporations or any of its provisions or this chapter or any of its provisions specifically have been or shall be made applicable to such corporations;

(2) To any corporation originally created by special Act of the General Assembly as to which power has not been reserved to withdraw the franchise, except as otherwise provided in subsection (a) of this Code section;

(3) To any corporation originally created by special Act of the General Assembly as to which power has been reserved to withdraw the franchise, if the purpose of the corporation would require its organization to take place under a statute other than this chapter, if it were being organized after July 1, 1991, except to the extent that the former general corporation law of this state or any of its provisions or this chapter or any of its provisions specifically have been or shall be made applicable to corporations organized for that purpose;

(4) To any public authority created by special Act of the General Assembly, except to the extent that the former general corporation law of this state or any of its provisions or this chapter or any of its provisions specifically have been or shall be made applicable to such public authority; or

(5) To corporations of any class to the extent that such class is specifically exempted from this chapter or any of its provisions.

(c) This chapter shall not impair the existence of any nonprofit corporation existing on July 1, 1991. Subject to Code Section 14-3-610, any such existing corporation to which this chapter is applicable and its members, directors, and officers shall have the same rights and be subject to the same limitations, restrictions, liabilities, and penalties as a corporation formed under this chapter and its members, directors, and officers.

(d) If the articles of incorporation, charter, or bylaws of a corporation in existence on July 1, 1991, contain any provisions that were not authorized or permitted by the prior general corporation law of this state but which are authorized or permitted by this chapter, the provisions of the articles of incorporation, charter, or bylaws shall be valid on and from that date, and action may be taken on and from that date in reliance on those provisions. If the articles of incorporation, charter, or bylaws of a corporation in existence on July 1, 1991, contain any provisions that were authorized or permitted by the prior nonprofit corporation law of this state, that were validly adopted under the law in effect at the time of their adoption, and that are authorized or permitted by this chapter, the provisions of the articles of incorporation, charter, or bylaws shall continue to be valid on and from that date, whether or

not this chapter imposes requirements for the adoption of such provisions that are different from those in effect at the time the provisions were adopted.

(e) This chapter shall apply to commerce with foreign nations and among the several states only insofar as the application may be permitted under the Constitution and laws of the United States. (Code 1981, § 14-3-1701, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 64; Ga. L. 2005, p. 60, § 14/HB 95.)

The 2004 amendment, effective July 1, 2004, added the last sentence in subsection (d).

The 2005 amendment, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (d).

14-3-1703. Saving provisions.

(a) Except as provided in subsection (b) of this Code section, the repeal of a statute by this chapter does not affect:

(1) The operation of the statute or any action taken under it before its repeal;

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal; but the same, as well as actions that are pending on July 1, 1991, may be asserted, enforced, prosecuted, or defended as if the prior statute has not been repealed;

(3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(4) Transactions validly entered into before July 1, 1991, and the rights, duties, and interests flowing from them shall remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute repealed by this chapter as though the repeal had not occurred;

(5) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed;

(6) Any provision of the articles of incorporation, charter, or bylaws of a corporation in existence on July 1, 1991, that was authorized or permitted by the prior nonprofit corporation law of this state, that was validly adopted under the law in effect at the time of its adoption, and that is authorized or permitted by this chapter; or

(7) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter. (Code 1981, § 14-3-1703, enacted by Ga. L. 1991, p. 465, § 1; Ga. L. 2004, p. 508, § 65.)

The 2004 amendment, effective July 1, 2004, in subsection (a), deleted ", except as provided in Code Section 14-3-1408" following "repeal" in paragraph (a)(2), deleted "or" at the end of paragraph (a)(5), added paragraph (a)(6), and redesignated former paragraph (a)(6) as present paragraph (a)(7).

CHAPTER 4

SECRETARY OF STATE CORPORATIONS

Article 1
General Provisions

ARTICLE 1

GENERAL PROVISIONS

14-4-2. Existing venue statutes unaffected by chapter.

Nothing in this chapter shall affect existing statutes with respect to the venue of actions against railroad, electric, banking, trust, insurance, canal, navigation, express, and telegraph companies, which existing statutes include, as to express companies, those statutes codified as Code Sections 46-9-234 through 46-9-236; as to companies under the jurisdiction of the Georgia Public Service Commission, that statute codified as Code Section 46-2-92. (Code 1933, § 22-4802, enacted by Ga. L. 1969, p. 152, § 98; Ga. L. 1984, p. 22, § 14; Ga. L. 2012, p. 847, § 1/HB 1115.)

The 2012 amendment, effective July 1, 2012, deleted "as to telegraph companies, that statute codified as Code Section 46-5-149;" preceding "as to companies" in the middle of this Code section.

CHAPTER 5

MISCELLANEOUS PROVISIONS RELATING TO CORPORATIONS

ARTICLE 1

GENERAL PROVISIONS

14-5-7. Execution of instruments conveying interest in real property or releasing security agreement.

(a) Instruments executed by a corporation conveying an interest in real property, when signed by the president or vice-president and attested or countersigned by the secretary or an assistant secretary or the cashier or assistant cashier of the corporation shall, notwithstanding the lack of a corporate seal, be conclusive evidence that the president or vice-president of the corporation executing the instrument does in fact occupy the official position indicated, that the signature of such officer subscribed thereto is genuine, and that the execution of the instrument on behalf of the corporation has been duly authorized. Any corporation may by proper resolution recorded with the instrument or otherwise filed of record and referenced on the face of the instrument authorize the execution of such instruments by other officers of the corporation.

(b) Instruments executed by a corporation releasing or transferring a deed to secure debt, mortgage, or other security agreement, when signed by the president, vice-president, secretary, or assistant secretary of the corporation shall, notwithstanding the lack of a corporate seal, be conclusive evidence that the officer of the corporation executing the instrument does in fact occupy the official position indicated, that the signature of such officer subscribed thereto is genuine, and that the execution of the instrument on behalf of the corporation has been duly authorized. Any corporation may by proper resolution recorded with the instrument or otherwise filed of record and referenced on the face of the

instrument authorize the execution of such instruments by other officers of the corporation. (Ga. L. 1962, p. 516, § 1; Code 1933, § 22-5106, enacted by Ga. L. 1968, p. 565, § 1; Ga. L. 1982, p. 1197, §§ 1, 2; Ga. L. 1992, p. 1180, § 2; Ga. L. 2011, p. 430, § 5/SB 64.)

The 2011 amendment, effective July 1, 2011, in subsection (a), in the first sentence, substituted "corporation shall, notwithstanding the lack of a corporate seal," for "corporation, shall", substituted "instrument" for "document" twice, and substituted a comma for a semicolon twice, and, in the last sentence, inserted "recorded with the instrument or otherwise filed of record and referenced on the face of the instrument"; and rewrote subsection (b), which read: "Instruments executed by a corporation releasing a security agreement, when signed by one officer of the corporation or by an individual designated by the officers of the corporation by proper resolution, without the necessity of the corporation's seal being attached, shall be conclusive evidence that said officer signing is duly authorized to execute and deliver the same."

Law reviews. — For article, "2008 Annual Review of Case Law Development," see 14 (No. 6) Ga. St. B.J. 28 (2009). For article, "2013 Georgia Corporation and Business Organization Case Law Developments," see 19 Ga. St. B.J. 28 (April 2014).

JUDICIAL DECISIONS

Corporate seal not requirement for valid corporate assignment of deed. — Unlike the current version of O.C.G.A. § 14-5-7, the prior version (effective until June 30, 2011) lacked explicit language that a corporate seal was not required for a conclusively valid corporate conveyance; yet, the applicable Georgia law still revealed that a corporate seal was not a requirement for a valid corporate assignment of deed. Foster v. Homeward Residential Inc. (In re Foster), 500 B.R. 197 (Bankr. N.D. Ga. 2013).

Fraudulent deed was facially regular and operated to release security interest. — A 2003 warranty deed that operated to release a prior lender's security interest in the property was not a forgery but was signed by someone fraudulently assuming the authority of an officer of the prior lender and was regular on the deed's face. Therefore, a subsequent lender that foreclosed on the property and purchased the property at the foreclosure sale was a bona fide purchaser for value entitled to take the property free of the prior lender's security interest. Deutsche Bank Nat'l Trust Co. v. JP Morgan Chase Bank, N.A., 307 Ga. App. 307, 704 S.E.2d 823 (2010).

14-5-8. Joint tenancy of shares and securities.

JUDICIAL DECISIONS

Joint property not property of trust estate. — Funds, which had been deposited by a trust donor from a joint account in the names of one of the beneficiaries, the donor, and the trustee had been used prior to the donor's death to purchase securities in the name of the donor and the trustee as joint tenants; those securities properly belonged to the trustee as the surviving party under O.C.G.A. §§ 7-1-813(a) and 14-5-8, and did not belong to the trust estate. Davis v. Walker, 288 Ga. App. 820, 655 S.E.2d 634 (2007).

ARTICLE 2

CORPORATION COMMISSIONER

14-5-21. Fees; report; refunds.

All fees collected by the Secretary of State shall be paid into the state treasury for the use of the state, and the Secretary of State shall include in his or her annual reports a full statement of all fees collected or received under Chapters 2 through 5 of this title and the disposition thereof. The Secretary of State shall be authorized to establish, by rule or regulation, a procedure by which his or her office shall refund fees collected in error or overpayment or to which the state is otherwise not entitled. (Ga. L. 1906, p. 105, § 6; Civil Code 1910, § 2213; Ga. L. 1931, p. 7, § 86; Code 1933, § 22-1702; Code 1933, § 22-5202, enacted by Ga. L. 1968, p. 565, § 1; Ga. L. 2011, p. 558, § 3/SB 121.)

The 2011 amendment, effective July 1, 2011, inserted "or her" in the first sentence and added the second sentence.

ARTICLE 3

CORPORATIONS ORGANIZED FOR RELIGIOUS, FRATERNAL, OR EDUCATIONAL PURPOSES

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Wrongful Expulsion from Voluntary Social Organization, 44 POF2d 455.

Civil Liability of Member or Officer of Unincorporated Association, 6 POF3d 679.

14-5-40. Applicability of Chapter 3 of title.

Chapter 3 of this title shall be fully applicable to all nonprofit corporations organized for religious, fraternal, or educational purposes, including incorporated churches, religious and fraternal societies, schools, academies, colleges, or universities which are "corporations" as that term is defined in paragraph (6) of Code Section 14-3-140. (Code 1933, § 22-5501, enacted by Ga. L. 1968, p. 565, § 1; Ga. L. 1991, p. 465, § 2; Ga. L. 2004, p. 508, § 69.)

The 2004 amendment, effective July 1, 2004, near the end of this Code section, substituted "corporations" for "nonprofit corporations" and substituted "paragraph (6)" for "paragraph (21)".

JUDICIAL DECISIONS

Construction with O.C.G.A. § 14-3-101. — Georgia Nonprofit Corporate Code, O.C.G.A. § 14-3-101 et seq., can be used to resolve certain controversies involving religious institutions, under O.C.G.A. §§ 14-3-180 and 14-5-40 et seq. Waverly Hall Baptist Church, Inc. v. Branham, 276 Ga. App. 818, 625 S.E.2d 23 (2005).

14-5-43. Church represented by majority; effect of withdrawal of part of congregation.

JUDICIAL DECISIONS

Insufficient record showing plaintiffs represented majority of church. — In a dispute over ownership of a church's property and assets, a trial court erred by granting summary judgment to the plaintiffs, who claimed to be the majority of the church's membership, because the record was insufficient to allow the trial court to determine whether plaintiffs represented a majority of the church. God's Hope Builders, Inc. v. Mount Zion Baptist Church of Oxford, Georgia, Inc., 321 Ga. App. 435, 741 S.E.2d 185 (2013).

Cited in Howard v. Johnson, 264 Ga. App. 660, 592 S.E.2d 93 (2003).

14-5-46. Conveyances to churches or religious societies confirmed.

Law reviews. — For annual survey on real property, see 64 Mercer L. Rev. 255 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration

Nothing in O.C.G.A. § 14-5-46 abrogates any other provision of Georgia law because by the statute's terms the statute refers to the validity of deeds of conveyance for the uses and purposes expressed in the deed, not to the imposition of a trust in favor of any use or purpose as expressed in other documents. Timberridge Presbyterian Church, Inc. v. Presbytery of Greater Atlanta, Inc., 307 Ga. App. 191, 705 S.E.2d 262 (2010).

Interpretation of language of deeds.

O.C.G.A. § 14-5-46 is limited on the statute's face to "deeds of conveyance," and nothing in the language of O.C.G.A. § 14-5-46 limits the statute's application to the rules of a national church; in applying neutral principles of law, a court cannot ignore relevant statutes, documents of the local body, or the actual language of the relevant deeds, in favor of the rules of the national body, and O.C.G.A. § 14-5-46 is to be read in harmony with the principles established for the resolution of church property disputes: a court applies neutral principles of law to the intents, uses, and purposes contained in the deeds of conveyance, as well as the mode of

church government or rules of discipline exercised by such churches or religious societies, on the local, regional, and national level as those pertain to the property at issue. Timberridge Presbyterian Church, Inc. v. Presbytery of Greater Atlanta, Inc., 307 Ga. App. 191, 705 S.E.2d 262 (2010).

Because the deeds at issue did not convey property to trustees, nor to the regional body representing a national church or the national church, but simply to a local church, O.C.G.A. § 14-5-46 could not be applied without reference to other statutory and case law, particularly when the imposition of a trust was alleged in the absence of any reference in the deeds; the requirements of the Georgia Trust Act, O.C.G.A. § 53-12-20, were consistent with determining the intentions of the parties by applying neutral principles of law to all the relevant deeds, statutes, constitutions, and charters of the local and national churches. Timberridge Presbyterian Church, Inc. v. Presbytery of Greater Atlanta, Inc., 307 Ga. App. 191, 705 S.E.2d 262 (2010).

Church Schisms

1. In General

Statute inapplicable if no deed of conveyance. — O.C.G.A. §§ 14-5-46 and 14-5-47 were not applicable to a national church's action to quiet title in property held by a local church because there was no deed of conveyance to the trustees of the local church; two recorded title affidavits executed by lifetime attendees of the local church, one 79 years old and the other 80, asserted there had never been a question concerning the church's right of ownership of the property, but recorded affidavits relating to land are not conveyances or a legal proceeding by which one could attack the title to realty or cure a defect in the title, O.C.G.A. § 44-2-20. Kemp v. Neal, 288 Ga. 324, 704 S.E.2d 175 (2010).

3. Hierarchical and Congregational Churches Distinguished

"Neutral principles" etc.

In a church property dispute between majority and minority factions of a local congregation, neutral principles of law, including the governing documents of the local and general churches, the title instruments, and the policy reflected in O.C.G.A. §§ 14-5-46 and 14-5-47, showed that the property was impressed with an implied trust in favor of the Episcopal Church. Accordingly, summary judgment in favor of the Episcopal Church, the Georgia diocese, and a minority faction was proper because the Georgia bishop recognized the minority faction as the true church entitled to control of the church property. Rector v. Bishop of the Episcopal Diocese of Ga., Inc., 290 Ga. 95, 718 S.E.2d 237 (2011), cert. dismissed, U.S. , 132 S. Ct. 2439, 182 L. Ed. 2d 1059 (2012).

In a church property dispute, neutral principles of law, derived from the governing documents adopted by local and national churches, supported by the policy reflected in O.C.G.A. §§ 14-5-46 and 14-5-47, and not contradicted by the deeds at issue, demonstrated that an implied trust in favor of the Presbyterian Church of the U.S.A. existed on a local church's property to which a corporation held legal title. Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc., 290 Ga. 272, 719 S.E.2d 446 (2011), cert. denied, U.S. , 132 S. Ct. 2772, 183 L. Ed. 2d 638 (2012).

Trustees

Trustee had no authority to act. — In a quiet title action involving church property, the trial court erred in making the legal conclusion that the founding pastor held the church property in fee simple absolute instead of in trust for and on behalf of the religious corporation as Georgia law expressly authorizes the creation of religious land trusts and the deed expressly referred to the pastor as a trustee. As such, the trial court erred in ruling that fee simple absolute title to the property vested in another congregation by virtue of a 1998 warranty deed executed by the pastor as the pastor had no legal authority to transfer the property without the consent and approval of the religious corporation. Second Refuge Church of Our Lord Jesus Christ, Inc. v. Lollar, 282 Ga. 721, 653 S.E.2d 462 (2007).

14-5-47. Authority of churches or religious societies over trustees holding land for their use.

JUDICIAL DECISIONS

Trustee had no authority to act. — In a quiet title action involving church property, the trial court erred in making the legal conclusion that the founding pastor held the church property in fee simple absolute instead of in trust for and on behalf of the religious corporation as Georgia law expressly authorizes the creation of religious land trusts and the deed expressly referred to the pastor as a trustee. As such, the trial court erred in ruling that fee simple absolute title to the property vested in another congregation by virtue of a 1998 warranty deed executed by the pastor as the pastor had no legal authority to transfer the property without the consent and approval of the religious corporation. Second Refuge Church of Our Lord Jesus Christ, Inc. v. Lollar, 282 Ga. 721, 653 S.E.2d 462 (2007).

Statute inapplicable when no deed of conveyance. — O.C.G.A. §§ 14-5-46 and 14-5-47 were not applicable to a national church's action to quiet title in property held by a local church because there was no deed of conveyance to the trustees of the local church; two recorded title affidavits executed by lifetime attendees of the local church, one 79 years old and the other 80, asserted there had never been a question concerning the church's right of ownership of the property, but recorded affidavits relating to land are not conveyances or a legal proceeding by which one could attack the title to realty or cure a defect in the title, O.C.G.A. § 44-2-20. Kemp v. Neal, 288 Ga. 324, 704 S.E.2d 175 (2010).

Neutral principles. — In a church property dispute between majority and minority factions of a local congregation, neutral principles of law, including the governing documents of the local and general churches, the title instruments, and the policy reflected in O.C.G.A. §§ 14-5-46 and 14-5-47 showed that the property was impressed with an implied trust in favor of the Episcopal Church. Accordingly, summary judgment in favor of the Episcopal Church, the Georgia diocese, and a minority faction was proper because the Georgia bishop recognized the minority faction as the true church entitled to control of the church property. Rector v. Bishop of the Episcopal Diocese of Ga., Inc., 290 Ga. 95, 718 S.E.2d 237 (2011), cert. dismissed, U.S. , 132 S. Ct. 2439, 182 L. Ed. 2d 1059 (2012).

In a church property dispute, neutral principles of law, derived from the governing documents adopted by local and national churches, supported by the policy reflected in O.C.G.A. §§ 14-5-46 and 14-5-47, and not contradicted by the deeds at issue, demonstrated that an implied trust in favor of the Presbyterian Church of the U.S.A. existed on a local church's property to which a corporation held legal title. Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc., 290 Ga. 272, 719 S.E.2d 446 (2011), cert. denied, U.S. , 132 S. Ct. 2772, 183 L. Ed. 2d 638 (2012).

CHAPTER 7

PROFESSIONAL CORPORATIONS

14-7-2. Definitions.

JUDICIAL DECISIONS

Lab technician not recognized as professional. — Affidavit requirement of O.C.G.A. § 9-11-9.1 did not apply to any acts committed by a lab technician because the technician was not recognized as a "professional" under Georgia law, O.C.G.A. § 14-7-2. Pattman v. Mann, 307 Ga. App. 413, 701 S.E.2d 232 (2010).

Cited in Carolina Cas. Ins. Co. v. R.L. Brown & Assocs., No. 1:04-cv-3537-GET, 2006 U.S. Dist. LEXIS 71056 (N.D. Ga. Sept. 29, 2006).

14-7-5. Stock.

Law reviews. — For annual survey of cases discussing business associations, see 57 Mercer L. Rev. 49 (2005).

JUDICIAL DECISIONS

Interpretation of professional corporation's bylaws. — Trial court erred by granting partial summary judgment to a doctor in a declaratory judgment action against the former clinic the doctor had worked for and was a shareholder of, because the trial court erroneously interpreted the professional corporation's bylaws as a restrictive covenant in restraint of trade when, in fact, the bylaws were not part of the doctor's employment contract and did not provide for a noncompetition penalty or forfeiture provision upon the doctor's departure. Albany Bone & Joint Clinic, P.C. v. Hajek, 272 Ga. App. 464, 612 S.E.2d 509 (2005).

CHAPTER 8

PARTNERSHIPS

Sec.
14-8-25. Incidents of tenancy in partnership.
14-8-57. Filing fees pertaining to foreign limited liability partnerships.

Law reviews. — For article, "Aggregate-Plus Theory of Partnership Taxation," see 43 Ga. L. Rev. 717 (2009).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Status as Partners, 4 POF2d 355.

Existence of Joint Venture, 12 POF2d 295.

Misconduct Warranting Dissolution of Partnership, 24 POF2d 455.

Piercing the Limited Partner Veil, 30 POF3d 249.

14-8-1. Short title.

JUDICIAL DECISIONS

Public filing of statement of partnership establishes existence of partnership. — Under the Georgia Uniform Partnership Act of 1984, O.C.G.A. § 14-8-1 et seq., the public filing of a joint venture's statement of partnership conclusively established the existence of a partnership; thus, the condemned property was partnership property and could not be used to satisfy a judgment lien against a partner of the joint venture. Accolades Apts., L.P. v. Fulton County, 279 Ga. 257, 612 S.E.2d 284 (2005).

Statement of partnership is a form of express agreement and the public filing of a joint venture's statement of partnership conclusively establishes the existence of a partnership; this conclusion is supported by O.C.G.A. §§ 14-8-8(a) and 14-8-10.1(f) and (g). Accolades Apts., L.P. v. Fulton County, 279 Ga. 257, 612 S.E.2d 284 (2005).

RESEARCH REFERENCES

ALR. — Construction and application of Revised Uniform Partnership Act, 70 ALR6th 209.

14-8-6. "Partnership" defined.

JUDICIAL DECISIONS

Partnership not found. — There was evidence that spouses had no partnership as to a leasing business where the husband testified that there was no partnership and that he never intended to form a commercial partnership with the wife, there were no documents indicating that there was a partnership, proceeds from the business were transferred to the parties' joint checking account without any portion going to either spouse individually, and neither the parties' accountant nor their banker heard of a partnership. Rosenfeld v. Rosenfeld, 286 Ga. App. 61, 648 S.E.2d 399 (2007), cert. denied, 2007 Ga. LEXIS 613 (Ga. 2007).

In a separate suit arising out of a divorce action wherein a wife sued the husband for breach of fiduciary duty and other claims based on an alleged commercial partnership involving a leasing business between the couple, the trial court did not abuse its discretion in denying the wife's motion for a new trial because some evidence showed that no partnership existed between the parties; the evidence included: the husband unequivocally testifying that there was no partnership and that the husband never intended to form a commercial partnership with the wife; and no documents reflected that a partnership existed as there was no written partnership agreement, no correspondence referencing a partnership, no partnership tax returns, no checking account in the name of a partnership, no tax identification number issued to a partnership, and no documents showing that any real or personal property was owned by a partnership entity. Rosenfeld v. Rosenfeld,

286 Ga. App. 61, 648 S.E.2d 399 (2007), cert. denied, 2007 Ga. LEXIS 613 (Ga. 2007).

Although the parties formed a contract to create a partnership under O.C.G.A. § 14-8-6 to create and own the screenplay, the partnership did not include producing the screenplay into a movie because the partner's tasks in the agreement did not concern producing a movie, and the contract expressly provided that it was "for the creation of a long form feature film script" and did not mention producing the screenplay into a film. Richards v. Platz, No. 1:10-cv-2262-TCB, 2013 U.S. Dist. LEXIS 13953 (N.D. Ga. Jan. 30, 2013).

Partnership found. — Parties formed a contract to create a partnership under O.C.G.A. § 14-8-6 to create and own the screenplay because the contract's provision that the parties would own the screenplay in full partnership evidenced the parties' intent to become partners in ownership of the screenplay and the agreement's provision that the parties be "active partners" also indicated a partnership for "creation" of a screenplay. Richards v. Platz, No. 1:10-cv-2262-TCB, 2013 U.S. Dist. LEXIS 13953 (N.D. Ga. Jan. 30, 2013).

Cited in Cypress Ins. Co. v. Duncan, 281 Ga. App. 469, 636 S.E.2d 159 (2006).

14-8-7. Determination of existence of partnership.

JUDICIAL DECISIONS

Common law joint-stock companies.

O.C.G.A. § 14-8-7 deals with partnership formation in the absence of an express agreement and is inapplicable where a statement of partnership is publicly filed. Accolades Apts., L.P. v. Fulton County, 279 Ga. 257, 612 S.E.2d 284 (2005).

Partnership not found.

There was evidence that spouses had no partnership as to a leasing business where the husband testified that there was no partnership and that he never intended to form a commercial partnership with the wife, there were no documents indicating that there was a partnership, proceeds from the business were transferred to the parties' joint checking account without any portion going to either spouse individually, and neither the parties' accountant nor their banker heard of a partnership. Rosenfeld v. Rosenfeld, 286 Ga. App. 61, 648 S.E.2d 399 (2007), cert. denied, 2007 Ga. LEXIS 613 (Ga. 2007).

In a separate suit arising out of a divorce action wherein a wife sued the husband for breach of fiduciary duty and other claims based on an alleged commercial partnership involving a leasing business between the couple, the trial court did not abuse its discretion in denying the wife's motion for a new trial because some evidence showed that no partnership existed between the parties; the evidence included: the husband unequivocally testifying that there was no partnership and that the husband never intended to form a commercial partnership with the wife; and no documents reflected that a partnership existed as there was no written partnership agreement, no correspondence referencing a partnership, no partnership tax returns, no checking account in the name of a partnership, no tax identification number issued to a partnership, and no documents showing that any real or personal property was owned by a partnership entity. Rosenfeld v. Rosenfeld, 286 Ga. App. 61, 648 S.E.2d 399 (2007), cert. denied, 2007 Ga. LEXIS 613 (Ga. 2007).

14-8-8. Determination of ownership of property.

JUDICIAL DECISIONS

Public filing of statement of partnership establishes existence of partnership. — Statement of partnership is a form of express agreement and the public filing of a joint venture's statement of partnership conclusively establishes the existence of a partnership; this conclusion is supported by O.C.G.A. §§ 14-8-8(a) and 14-8-10.1(f) and (g). Accolades Apts., L.P. v. Fulton County, 279 Ga. 257, 612 S.E.2d 284 (2005).

Partnership not established by evidence. — It was error to find the existence of a partnership between a business owner and the alleged partner, as the business was not included in any partnership agreement, described in any recorded statement, or acquired in a partnership name; furthermore, without any record evidence of a settlement agreement between the two, the court also erred in finding a valid accord and satisfaction. Yun v. Um, 277 Ga. App. 477, 627 S.E.2d 49 (2006).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — CERCLA Liability of Parent, Subsidiary and Successor Corporation, 34 POF3d 387.

Citizens' Suit Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-To-Know Act (EPCRA), 55 POF3d 155.

14-8-9. Agency of partners for partnership.

JUDICIAL DECISIONS

Partner's ability to contract. — Summary judgment for a construction company on a counterclaim filed by a mortgage corporation was reversed as, while a development corporation, as the primary managing partner of a partnership, had the ostensible authority to enter into a contract for the demolition of structures on a property as nothing in the partnership agreement limited the development corporation's power to enter into such a contract, there were fact issues as to whether the development corporation had such authority as neither the partnership, nor the sole officers and shareholders of the mortgage corporation that owned the property, ever acquired ownership of the property; there were also fact issues as to whether the mortgage corporation, based upon its own actions, was estopped from denying the development corporation's authority to contract for demolition services on the property. Nationwide Mortg. Servs. v. Troy Langley Constr., Co., 280 Ga. App. 539, 634 S.E.2d 502 (2006).

14-8-10.1. Statement of partnership generally.

JUDICIAL DECISIONS

Public filing of statement of partnership establishes existence of a partnership. — Statement of partnership is a form of express agreement and the public filing of a joint venture's statement of partnership conclusively establishes the existence of a partnership; this conclusion is supported by O.C.G.A.

§§ 14-8-8(a) and 14-8-10.1(f) and (g). Accolades Apts., L.P. v. Fulton County, 279 Ga. 257, 612 S.E.2d 284 (2005).

14-8-13. Liability of partnership for acts of partners.

Law reviews. — For article, "2013 Georgia Corporation and Business Organization Case Law Developments," see 19 Ga. St. B.J. 28 (April 2014).

14-8-15. Liability of partners.

Law reviews. — For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010). For annual survey of law on business associations, see 62 Mercer L. Rev. 41 (2010). For article, "2013 Georgia Corporation and Business Organization Case Law Developments," see 19 Ga. St. B.J. 28 (April 2014).

JUDICIAL DECISIONS

Liability of individual partners for judgment against partnership. — A company that had obtained a default judgment against a general partnership and one of its partners in a suit alleging breach of contract and negligent construction, was entitled, under O.C.G.A. § 14-8-15, to summary judgment in a subsequent suit against the remaining partners because they were jointly and severally liable for the judgment against the partnership. J.T. Turner Constr. Co. v. Summerour, 301 Ga. App. 323, 687 S.E.2d 612 (2009).

Where no partnership found, owner was individually liable. — As it was error to find the existence of a partnership between a business owner and an alleged partner, as the business was not included in any partnership agreement, described in any recorded statement, or acquired in a partnership name, when the business sold, and the owner effectuated the sale in an individual capacity, the owner, and not the alleged partner or partnership entity, remained liable as an individual guarantor on the sale. Yun v. Um, 277 Ga. App. 477, 627 S.E.2d 49 (2006).

14-8-25. Incidents of tenancy in partnership.

(a) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(b) The incidents of the tenancy are such that:

(1) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners;

(2) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property;

(3) A partner's right in specific partnership property is not subject to attachment, judgment lien, execution, or other enforcement of a claim except on a claim against the partnership. When partnership

property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws;

(4) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose;

(5) A partner's right in specific partnership property is not subject to the year's support provided for in former Code Sections 53-5-1 and 53-5-2 as such existed on December 31, 1997, if applicable, or in Code Sections 53-3-1, 53-3-2, 53-3-4, 53-3-5, and 53-3-7.

(c) Nothing in Code Section 14-8-24 and this Code section shall modify, affect, or act in derogation of any portion of this chapter concerning the manner of vesting title to property (including, without limitation, real property) in the name of the partnership or the ownership of such property by the partnership. (Code 1981, § 14-8-25, enacted by Ga. L. 1984, p. 1439, § 1; Ga. L. 1998, p. 128, § 14; Ga. L. 2011, p. 752, § 14/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "in former Code Sections 53-5-1 and 53-5-2 as such existed on December 31, 1997, if applicable, or in Code Sections 53-3-1, 53-3-2, 53-3-4, 53-3-5, and 53-3-7." for "in Code Sections 53-5-1 and 53-5-2 of the 'Pre-1998 Probate Code,' if applicable, or Code Sections 53-3-1, 53-3-2, 53-3-4, 53-3-5, and 53-3-7 of the 'Revised Probate Code of 1998.'" in paragraph (b)(5).

14-8-28. Judgment creditor of a partner against debtor partner's interest in partnership.

Law reviews. — For annual review of Georgia Corporation and Business Organization Law, see 15 (No. 7) Ga. St. B.J. 20 (2010).

JUDICIAL DECISIONS

Limitations on actions. — Trial court improperly granted summary judgment to judgment debtors on a judgment creditor's claim under O.C.G.A. § 14-8-28 upon finding that the limitations period under O.C.G.A. § 18-2-79 barred the claim as there was no legal basis to conclude that the limitation period in § 18-2-79 was applicable to the creditor's claim. Morris v. Nexus Real Estate Mortg. & Inv. Co., 296 Ga. App. 477, 675 S.E.2d 511 (2009).

Res judicata. — Prior judgment that resolved a judgment creditor's claims against a partnership did not have a res judicata effect on the creditor's later action under O.C.G.A. § 14-8-28 against individual debtors, as assignees of a deceased partner-debtor's partnership interest, as the partnership and the individual debtors were not in privity and did

not have the same interest. Morris v. Nexus Real Estate Mortg. & Inv. Co., 296 Ga. App. 477, 675 S.E.2d 511 (2009).

14-8-31. Causation of dissolution.

JUDICIAL DECISIONS

Liability for wrongful dissolution. Court of appeals erred in granting an attorney's motion for summary judgment in its action to dissolve a partnership because it cited disapproved language that the tort of wrongful dissolution of a partnership required the attempt to appropriate the "new prosperity" of the partnership; the gravamen of a wrongful dissolution claim is a partner's attempt to appropriate, through the dissolution, the assets or business of the partnership, which may include prospective business, without adequate compensation to the remaining partners. Jordan v. Moses, 291 Ga. 39, 727 S.E.2d 460 (2012).

14-8-38. Application of partnership property to satisfy obligations upon rightful dissolution; rights of partners following wrongful dissolution.

JUDICIAL DECISIONS

Liability for wrongful dissolution. Court of appeals erred in granting an attorney's motion for summary judgment in its action to dissolve a partnership because it cited disapproved language that the tort of wrongful dissolution of a partnership required the attempt to appropriate the "new prosperity" of the partnership; the gravamen of a wrongful dissolution claim is a partner's attempt to appropriate, through the dissolution, the assets or business of the partnership, which may include prospective business, without adequate compensation to the remaining partners. Jordan v. Moses, 291 Ga. 39, 727 S.E.2d 460 (2012).

Lost profits properly awarded. — Evidence that an appellant breached an agreement with the appellee; was unjustly enriched by keeping the profits of the parties' business during the months the appellee was entitled to operate it; and committed civil conspiracy when, in concert with the parties' lessor, prevented the appellee from operating the business, supported an award of lost profit damages to the appellee. Asgharneya v. Hadavi, 298 Ga. App. 693, 680 S.E.2d 866 (2009), overruled on other grounds, Jordan v. Moses, 291 Ga. 39, 727 S.E.2d 460 (2012).

14-8-57. Filing fees pertaining to foreign limited liability partnerships.

The Secretary of State shall collect the following fees and penalties when the documents described below are delivered to the Secretary of State for filing pursuant to the chapter:

Document	Fee
(1) Application for certificate of authority to transact business	$ 200.00

Document	Fee
(2) Statement of change of registered office or registered agent ..... $5.00 per foreign limited liability partnership, but not less than	20.00
(3) Registered agent's statement of resignation pursuant to subsection (e) of Code Section 14-8-46	No fee
(4) Annual registration	25.00
(5) Penalty for late filing of annual registration	25.00
(6) Application of withdrawal	No fee
(7) Any other document required or permitted to be filed by this chapter	20.00

(Code 1981, § 14-8-57, enacted by Ga. L. 1994, p. 1674, § 2; Ga. L. 2008, p. 253, § 10/SB 436.)

The 2008 amendment, effective July 1, 2008, added paragraphs (5) and (6), and redesignated former paragraph (5) as present paragraph (7).

14-8-62. Limited liability partnership election; recording; fees; contents; procedures and effect; cancellation; dissolution of partnership; amendment of certificate to comply with name requirements.

Law reviews. — For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

CHAPTER 9

REVISED UNIFORM LIMITED PARTNERSHIP ACT

Article 2

Formation, Amendment, Cancellation, Merger

Article 9

Foreign Limited Partnerships

Article 11
Administration

Sec.
14-9-1101. Fees.

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007). For annual survey on business associations, see 65 Mercer L. Rev. 55 (2013).

ARTICLE 1

GENERAL PROVISIONS

14-9-104. Registered office and agents.

JUDICIAL DECISIONS

Cited in Munoz v. Pac. Ins. Co., 261 Ga. App. 246, 582 S.E.2d 207 (2003).

ARTICLE 2

FORMATION, AMENDMENT, CANCELLATION, MERGER

14-9-206. Filing with Secretary of State.

(a) A signed copy, and facsimile thereof, of the certificate of limited partnership and of any certificates of amendment, cancellation, or merger, or of any judicial decree of amendment, cancellation, or merger must be delivered to the Secretary of State; provided, however, that if the document is electronically transmitted, the electronic version of such person's name may be used in lieu of a signature. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his or her authority as a prerequisite to filing. Unless the Secretary of State finds that a certificate does not conform to law, upon receipt of all filing fees required by law he or she shall:

(1) Stamp or otherwise endorse his or her official title and the date and time of receipt on both the original and the facsimile copy;

(2) File the signed copy in his or her office; and

(3) Return the facsimile of the signed copy to the person who filed it or to his or her representative.

(b) Upon the later of the filing of a certificate of amendment pursuant to this Code section or the effective time, or effective date and time, of the amendment pursuant to paragraph (4) of subsection (a) of Code

Section 14-9-202, or upon the recording pursuant to Code Section 14-9-205 of a certificate of amendment, the certificate of limited partnership is amended as set forth in the certificate of amendment.

(c) Upon the later of the filing of a certificate of cancellation pursuant to this Code section or the effective time or the effective date and time of the cancellation pursuant to paragraph (4) of Code Section 14-9-203, or upon the recording pursuant to Code Section 14-9-205 of a certificate of cancellation, the certificate of limited partnership is canceled.

(d) Upon the later of the filing of a certificate of merger pursuant to this Code section or the effective time or the effective date and time pursuant to paragraph (4) of subsection (b) of Code Section 14-9-206.1 of a certificate of merger, or upon the recording pursuant to Code Section 14-9-205 of a certificate of merger, the constituent entities named in the certificate are merged.

(e) Notwithstanding the provisions of this chapter, the Secretary of State may authorize the filing of documents by electronic transmission, following the provisions of Chapter 12 of Title 10, the "Uniform Electronic Transactions Act," and the Secretary of State shall be authorized to promulgate such rules and regulations as are necessary to implement electronic filing procedures. (Code 1981, § 14-9-206, enacted by Ga. L. 1988, p. 1016, § 1; Ga. L. 1996, p. 787, § 9; Ga. L. 1999, p. 405, § 26; Ga. L. 2009, p. 698, § 2/HB 126.)

The 2009 amendment, effective July 1, 2009, substituted "Uniform Electronic Transactions Act" for "Georgia Electronic Records and Signatures Act" in the middle of subsection (e).

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

14-9-206.2. Conversion to limited partnership.

(a) A corporation, foreign corporation, limited liability company, foreign limited liability company, foreign limited partnership, general partnership, or foreign general partnership may elect to become a limited partnership. Such election shall require:

(1) Compliance with Code Section 14-2-1109.1 in the case of a Georgia corporation; or

(2) Approval of all of its partners, members, or shareholders, or such other approval as may be sufficient under applicable law or the governing documents of the electing entity to authorize such election, in the case of a foreign corporation, limited liability company, foreign limited liability company, foreign limited partnership, general partnership, or foreign general partnership.

(b) Such election is made by delivery of a certificate of conversion to the Secretary of State for filing. The certificate shall set forth:

(1) The name and jurisdiction of organization of the entity making the election;

(2) That the entity elects to become a limited partnership;

(3) The effective date and time of such election if later than the date and time the certificate of conversion is filed;

(4) That the election has been approved as required by subsection (a) of this Code section;

(5) That filed with the certificate of conversion is a certificate of limited partnership that is in the form required by Code Section 14-9-201, that sets forth a name for the limited partnership that satisfies the requirements of Code Section 14-9-102, and that shall be the certificate of limited partnership of the limited partnership formed pursuant to such election unless and until modified in accordance with this chapter; and

(6) A statement setting forth either:

(A) The manner and basis for converting the ownership interests in the entity making the election into interests as partners of the limited partnership formed pursuant to such election; or

(B)(i) That a written limited partnership agreement has been entered into among the persons who will be the partners of the limited partnership formed pursuant to such election;

(ii) That such limited partnership agreement will be effective immediately upon the effectiveness of such election; and

(iii) That such limited partnership agreement provides for the manner and basis of such conversion.

(c) Upon the election becoming effective the:

(1) Electing entity shall become a limited partnership formed under this chapter by such election except that the existence of the limited partnership so formed shall be deemed to have commenced on the date the entity making the election commenced its existence in the jurisdiction in which such entity was first created, formed, incorporated, or otherwise came into being;

(2) Ownership interests in the entity making the election shall be converted on the basis stated or referred to in the certificate of conversion in accordance with paragraph (6) of subsection (b) of this Code section;

(3) Certificate of limited partnership filed with the certificate of conversion shall be the certificate of limited partnership of the limited partnership formed pursuant to such election unless and until amended in accordance with this chapter;

(4) Governing documents of the entity making the election shall be of no further force or effect;

(5) Limited partnership formed by such election shall thereupon and thereafter possess all of the rights, privileges, immunities, franchises, and powers of the entity making the election; all property, real, personal, and mixed, all contract rights, and all debts due to such entity, as well as all other choses in action, and each and every other interest of, belonging to, or due to the entity making the election shall be taken and deemed to be vested in the limited partnership formed by such election without further act or deed; the title to any real estate, or any interest in real estate, vested in the entity making the election shall not revert or be in any way impaired by reason of such election; and none of such items shall be deemed to have been conveyed, transferred, or assigned by reason of such election for any purpose; and

(6) Limited partnership formed by such election shall thereupon and thereafter be responsible and liable for all the liabilities and obligations of the entity making the election, and any claim existing or action or proceeding pending by or against such entity may be prosecuted as if such election had not become effective. Neither the rights of creditors nor any liens upon the property of the entity making such election shall be impaired by such election.

(d) A conversion pursuant to this Code section shall not be deemed to constitute a dissolution of the entity making the election and shall constitute a continuation of the existence of the entity making the election in the form of a limited partnership. A limited partnership formed by an election pursuant to this Code section shall for all purposes be deemed to be the same entity as the entity making such election.

(e) A limited partnership formed by the election pursuant to this Code section may file a copy of such certificate of conversion, certified by the Secretary of State, in the office of the clerk of the superior court of the county where any real property owned by such limited partnership is located and record such certified copy of the certificate of conversion in the books kept by such clerk for recordation of deeds in such county with the entity electing to become a limited partnership indexed as the grantor and the limited partnership indexed as the grantee. No real estate transfer tax under Code Section 48-6-1 shall be due with respect to the recordation of such election.

(f) The Secretary of State shall be authorized to promulgate such rules and charge such filing fees as are necessary to carry out the purpose of this Code section. (Code 1981, § 14-9-206.2, enacted by Ga. L. 1997, p. 1380, § 2; Ga. L. 1999, p. 827, § 1; Ga. L. 2006, p. 825, § 20/SB 469.)

The 2006 amendment, effective July 1, 2006, rewrote this Code section.

14-9-206.5. Annual registration.

Law reviews. — For article, "Post-Creation Checklist for Georgia Business Entities," see 9 Ga. St. B.J. 24 (2004).

14-9-206.8. Conversion to foreign limited liability company, foreign limited partnership, or foreign corporation, requirement.

(a) A limited partnership may elect to become a foreign limited liability company, a foreign limited partnership, or a foreign corporation, if such a conversion is permitted by the law of the state or jurisdiction under whose law the resulting entity would be formed.

(b) To effect a conversion under this Code section, the limited partnership must adopt a plan of conversion that sets forth the manner and basis of converting the interests of the partners of the limited partnership into interests, shares, obligations, or other securities, as the case may be, of the resulting entity. The plan of conversion may set forth other provisions relating to the conversion.

(c) The limited partnership shall have the plan of conversion authorized and approved by the unanimous consent of the partners, unless the limited partnership agreement of such limited partnership provides otherwise.

(d) After a conversion is authorized, unless the plan of conversion provides otherwise, and at any time before the conversion has become effective, the planned conversion may be abandoned, subject to any contractual rights, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, by the unanimous consent of the partners of the limited partnership, unless the limited partnership agreement of such limited partnership provides otherwise.

(e) The conversion shall be effected as provided in, and shall have the effects provided by, the law of the state or jurisdiction under whose law the resulting entity is formed and by the plan of conversion, to the extent not inconsistent with such law.

(f) If the resulting entity is required to obtain a certificate of authority to transact business in this state by the provisions of this title governing foreign corporations, foreign limited partnerships, or foreign limited liability companies, it shall do so.

(g) After a plan of conversion is approved by the partners, the limited partnership shall deliver to the Secretary of State for filing a certificate of conversion setting forth:

(1) The name of the limited partnership;

(2) The name and jurisdiction of the entity to which the limited partnership shall be converted;

(3) The effective date, or the effective date and time, of such conversion if later than the date and time the certificate of conversion is filed;

(4) A statement that the plan of conversion has been approved as required by subsection (c) of this Code section;

(5) A statement that the authority of its registered agent to accept service on its behalf is revoked as of the effective time of such conversion and that the Secretary of State is irrevocably appointed as the agent for service of process on the resulting entity in any proceeding to enforce an obligation of the limited partnership arising prior to the effective time of such conversion;

(6) A mailing address to which a copy of any process served on the Secretary of State under paragraph (5) of this subsection may be mailed as provided in subsection (h) of this Code section; and

(7) A statement that the Secretary of State shall be notified of any change in the resulting entity's mailing address.

(h) Upon the conversion's taking effect, the resulting entity is deemed to appoint the Secretary of State as its agent for service of process in a proceeding to enforce any of its obligations arising prior to the effective time of such conversion. Any party that serves process upon the Secretary of State in accordance with this subsection also shall mail a copy of the process to the chief executive officer, chief financial officer, or the secretary of the resulting entity, or a person holding a comparable position, at the mailing address provided in subsection (g) of this Code section.

(i) A converting limited partnership pursuant to this Code section may file a copy of its certificate of conversion, certified by the Secretary of State, in the office of the clerk of the superior court of the county where any real property owned by such limited partnership is located and record such certified copy of the certificate of conversion in the books kept by such clerk for recordation of deeds in such county with the limited partnership indexed as the grantor and the foreign entity indexed as the grantee. No real estate transfer tax otherwise required by Code Section 48-6-1 shall be due with respect to recordation of such certificate of conversion. (Code 1981, § 14-9-206.8, enacted by Ga. L. 2006, p. 825, § 21/SB 469; Ga. L. 2007, p. 455, § 3/SB 234.)

Effective date. — This Code section became effective July 1, 2006.

The 2007 amendment, effective July 1, 2007, added subsections (g) through (i).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, a misspelling of "subsection" was corrected in paragraph (g)(6).

ARTICLE 3

LIMITED PARTNERS

14-9-302. Voting rights; additional rights, powers, and duties.

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

14-9-303. Liability.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Piercing the Limited Partner Veil, 30 POF3d 249.

ARTICLE 6

DISTRIBUTIONS AND WITHDRAWAL

14-9-605. Form of distribution.

JUDICIAL DECISIONS

Home no longer owned by partnership. — In a divorce case, it was error to award ownership interests in a home to separate trusts for the parties' three children; under both a partnership agreement and O.C.G.A. §§ 14-9-605 and 14-9-701, the trusts were not entitled to an ownership interest in the home, which the partnership no longer owned, but to cash compensation. Bloomfield v. Bloomfield, 282 Ga. 108, 646 S.E.2d 207 (2007).

ARTICLE 7

PARTNERSHIP INTERESTS

14-9-701. Nature of partnership interest.

JUDICIAL DECISIONS

Home no longer owned by partnership. — In a divorce case, it was error to award ownership interests in a home to separate trusts for the parties' three children; under both a partnership agreement and O.C.G.A. §§ 14-9-605 and 14-9-701, the trusts were not entitled to an ownership interest in the home, which the partnership no longer owned, but to cash compensation. Bloomfield v. Bloomfield, 282 Ga. 108, 646 S.E.2d 207 (2007).

ARTICLE 8

DISSOLUTION

14-9-802. Judicial dissolution.

Law reviews. — For article, "Business Associations," see 63 Mercer L. Rev. 83 (2011).

ARTICLE 9

FOREIGN LIMITED PARTNERSHIPS

14-9-902. Certificate of authority; activities not constituting transacting business.

(a) A foreign limited partnership transacting business in this state shall procure a certificate of authority to do so from the Secretary of State. In order to procure a certificate of authority to transact business in this state, a foreign limited partnership shall submit to the Secretary of State an application for a certificate of authority as a foreign limited partnership, signed by a general partner setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to qualify and transact business in this state;

(2) The state and date of its formation;

(3) The name and address of any qualified agent for service of process on the foreign limited partnership as required to be maintained by Code Section 14-9-902.1;

(4) A statement that the Secretary of State is, pursuant to subsection (i) of Code Section 14-9-902.1, appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under subsection (a) of Code Section 14-9-902.1 or, if appointed, the agent's authority has been revoked or the agent cannot be found by the exercise of reasonable diligence or served;

(5) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) The name and business address of each general partner; and

(7) The address of the office, if any, at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited

partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

(b) Without excluding other activities which may not constitute transacting business in this state, a foreign limited partnership shall not be considered to be transacting business in this state, for the purpose of qualification under this chapter, solely by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts, share accounts in savings and loan associations, custodial or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of its partnership interests, or appointing and maintaining trustees or depositaries with relation to its partnership interests;

(5) Effecting sales through independent contractors;

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance outside this state before becoming binding contracts and where such contracts do not involve any local performance other than delivery and installation;

(7) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

(8) Securing or collecting debts or enforcing any rights in property securing the same;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction not in the course of a number of repeated transactions of a like nature;

(11) Effecting transactions in interstate or foreign commerce;

(12) Serving as trustee, executor, administrator, or guardian, or in like fiduciary capacity, where permitted so to serve by the laws of this state; or

(13) Owning directly or indirectly an interest in or controlling directly or indirectly another person organized under the laws of or transacting business within this state.

(c) This Code section shall not be deemed to establish a standard for activities that may subject a foreign limited partnership to taxation or to service of process under any of the laws of this state. (Code 1981, § 14-9-902, enacted by Ga. L. 1988, p. 1016, § 1; Ga. L. 1995, p. 470, § 14; Ga. L. 2006, p. 825, § 22/SB 469.)

The 2006 amendment, effective July 1, 2006, deleted "and sworn to" following "partnership, signed" near the end of the introductory paragraph of subsection (a).

Editor's notes. — Ga. L. 2006, p. 825, § 22, which amended this Code section, purported to amend the "introductory language" but amended subsection (a).

14-9-905. Change of name or state of organization; foreign limited partnership converting to foreign limited liability company or foreign corporation.

(a) A foreign limited partnership authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes its name or its state of organization. The requirements of Code Sections 14-9-902 and 14-9-903 for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this Code section.

(b) If a foreign limited partnership authorized to transact business in this state converts into a foreign limited liability company:

(1) The foreign limited partnership shall notify the Secretary of State that such conversion has occurred no later than 30 days after the conversion, using such form as the Secretary of State shall specify, which form may require such information and statements as may be required to be submitted by a foreign limited liability company that applies for a certificate of authority to transact business in this state; and

(2) If such notice is timely given:

(A) The authorization of such entity to transact business in this state shall continue without interruption; and

(B) The certificate of authority issued to such foreign limited partnership under this article shall constitute a certificate of authority issued under Code Section 14-11-704 to the foreign limited liability company resulting from the conversion effective as of the date of the conversion.

The Secretary of State shall adjust its records accordingly.

(c) If a foreign limited partnership authorized to transact business in this state converts into a foreign corporation:

(1) The foreign limited partnership shall notify the Secretary of State that such conversion has occurred no later than 30 days after

the conversion, using such form as the Secretary of State shall specify, which form may require such information and statements as may be required to be submitted by a foreign corporation that applies for a certificate of authority to transact business in this state; and

(2) If such notice is timely given:

(A) The authorization of such entity to transact business in this state shall continue without interruption; and

(B) The certificate of authority issued to such foreign limited partnership under this article shall constitute a certificate of authority issued under Code Sections 14-2-1501 and 14-2-1503 to the foreign corporation resulting from the conversion effective as of the date of the conversion.

The Secretary of State shall adjust its records accordingly. (Code 1981, § 14-9-905, enacted by Ga. L. 1988, p. 1016, § 1; Ga. L. 2006, p. 825, § 23/SB 469.)

The 2006 amendment, effective July 1, 2006, designated the previously existing provisions of this Code section as subsection (a); and added subsections (b) and (c).

ARTICLE 11

ADMINISTRATION

14-9-1101. Fees.

The Secretary of State shall charge and collect for filing:

Document	Fee
(1) A certificate of limited partnership	$ 100.00
(2) A registration of a foreign limited partnership	225.00
(3) An annual registration	50.00
(4) Penalty for late filing of annual registration	25.00
(5) Agent's statement of resignation	No fee
(6) Certificate of cancellation	No fee
(7) Application of withdrawal	No fee
(8) Statement of change of address of registered agent or registered office .... $5.00 per limited partnership but not less than	20.00

Document	Fee
(9) An amendment to a certificate of limited partnership for the purpose of becoming a limited liability partnership	100.00
(10) Certificate of election to become a limited partnership	80.00
(11) Certificate of conversion	95.00
(12) Application for reservation of a name	25.00
(13) Any other document required or permitted pursuant to this chapter	20.00

(Code 1981, § 14-9-1101, enacted by Ga. L. 1988, p. 1016, § 1; Ga. L. 1989, p. 931, § 16; Ga. L. 1996, p. 787, § 14; Ga. L. 1999, p. 405, § 29; Ga. L. 2003, p. 883, § 6; Ga. L. 2007, p. 455, § 4/SB 234; Ga. L. 2008, p. 253, § 11/SB 436; Ga. L. 2010, p. 9, § 1-35/HB 1055.)

The 2007 amendment, effective July 1, 2007, substituted the present provisions of paragraph (8) for the former provisions, which read: "Filing any other document required or permitted pursuant to this chapter .... 20.00", and added paragraph (10).

The 2008 amendment, effective July 1, 2008, in the introductory language, added "filing" at the end; in paragraph (1), substituted "A certificate" for "Filing a certificate"; in paragraph (2), substituted "A registration" for "Filing a registration"; in paragraph (3), substituted "An annual" for "Filing an annual"; added paragraph (4); redesignated former paragraph (4) as present paragraph (5); added paragraphs (6) and (7); redesignated former paragraphs (5) through (10) as present paragraphs (8) through (13), respectively; in paragraph (9), substituted "An amendment" for "Filing of an amendment"; and, in paragraph (13), substituted "Any other" for "Filing any other".

The 2010 amendment, effective May 12, 2010, substituted "50.00" for "30.00" in paragraph (3).

CHAPTER 9A

LIMITED PARTNERSHIPS

Article 2

Limited Partnerships Formed Prior to February 15, 1952

Sec.

ARTICLE 1

LIMITED PARTNERSHIPS FORMED SINCE FEBRUARY 15, 1952

Part 1

General Provisions

14-9A-3. Construction of article.

JUDICIAL DECISIONS

Cited in Hendry v. Wells, 286 Ga. App. 774, 650 S.E.2d 338 (2007).

Part 3

Limited Partners

14-9A-42. Rights.

JUDICIAL DECISIONS

Damages for breach of fiduciary duty supported by evidence. — General partner of a limited partnership that owned a shopping center, the partnership's president, and the shopping center managers' claim that the limited partners failed to support the damages awarded by a jury for breach of fiduciary duty in a derivative action was rejected as the claim was not raised below, the parties introduced expert testimony based upon an individual cash flow analysis that employed almost the same documentation, and the damages awarded by the jury for breach of fiduciary duty could be based on a cash flow analysis. T. C. Prop. Mgmt., Inc. v. Tsai, 267 Ga. App. 740, 600 S.E.2d 770 (2004).

Part 5

Contributors

14-9A-80. Party to proceedings.

JUDICIAL DECISIONS

Nature of claims against partnership. — When limited partners alleged that they had not received their portion of the financial items produced by the limited partnership and that their right to vote their shares was violated, it was error to dismiss their claims as derivative, as the alleged injury was to themselves and not to the partnership; however, it was proper to dismiss a claim based on a contractual relationship between the partnership and a third party, as if the claim had any merit it would inure to the benefit of the entire partnership. Hendry v. Wells, 286 Ga. App. 774, 650 S.E.2d 338 (2007), cert. denied, 2008 Ga. LEXIS 102 (Ga. 2008).

ARTICLE 2

LIMITED PARTNERSHIPS FORMED PRIOR TO FEBRUARY 15, 1952

14-9A-117. Certified copies admissible in evidence.

Reserved. Repealed by Ga. L. 2011, p. 99, § 19/HB 24, effective January 1, 2013.

Editor's notes. — This Code section was based on Laws 1837, Cobb's 1851 Digest, p. 586; Code 1863, § 1928; Code 1868, § 1916; Code 1873, § 1926; Code 1882, § 1926; Civil Code 1895, § 2668; Civil Code 1910, § 3197; Code 1933, § 75-407; Code 1981, § 14-9-117; Code 1981, § 14-9A-117, as redesignated by Ga. L. 1988, p. 1016, § 1. For present provisions, see § 24-8-803.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article on the 2011 repeal of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

CHAPTER 10

PROFESSIONAL ASSOCIATIONS

Sec.
14-10-4. Formation.

14-10-2. Definitions.

JUDICIAL DECISIONS

Cited in Carolina Cas. Ins. Co. v. R.L. Brown & Assocs., No. 1:04-cv-3537-GET, 2006 U.S. Dist. LEXIS 71056 (N.D. Ga. Sept. 29, 2006).

14-10-4. Formation.

(a) **Articles of association.**

(1) **Filing; contents.** To form a professional association, such persons shall execute and file articles of association in the office of the clerk of the superior court in the county in which the association's principal office is located. Articles of association may contain any provision not in violation of law or the public policy of this state as the members of the association may decide.

(2) **Recording; fees.** The clerk shall record the articles of association and any amendments thereto or instruments of dissolution thereof in the same manner as required for articles of incorporation

and shall receive a fee as required by paragraph (1) of subsection (g) of Code Section 15-6-77. Articles shall not be required to be published or recorded elsewhere. Such record of the articles, when so recorded, shall be notice of the articles to the world as well as to all parties dealing with such association.

(3) **Amendment; dissolution.** The articles may be amended or dissolved at any time by agreement of two-thirds of the members at any regular meeting or at a special meeting called for that purpose and upon filing the amendment or instrument of dissolution in the same place or places as the original article of association.

(b) **Name.** The persons forming the association shall adopt such name for the association as they in their discretion may determine; but the name selected shall be followed by the words "Professional Association" or the abbreviation "P.A." (Ga. L. 1961, p. 404, § 4; Ga. L. 1981, p. 1396, § 22; Ga. L. 1992, p. 6, § 14; Ga. L. 2010, p. 9, § 1-36/HB 1055; Ga. L. 2011, p. 430, § 6/SB 64.)

The 2010 amendment, effective May 12, 2010, deleted "and shall receive a fee as required by paragraph (17) of subsection (g) of Code Section 15-6-77" following "incorporation" at the end of the first sentence of paragraph (a)(2).

The 2011 amendment, effective July 1, 2011, added "and shall receive a fee as required by paragraph (1) of subsection (g) of Code Section 15-6-77" in the first sentence of paragraph (a)(2).

14-10-7. Relationship between person rendering and person receiving professional service; liability of members for debts of or claims against association.

Cross references. — Privileged communications generally, § 24-5-506 et seq.

CHAPTER 11

LIMITED LIABILITY COMPANIES

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007). For article, "Aggregate-Plus Theory of Partnership Taxation," see 43 Ga. L. Rev. 717 (2009).

ARTICLE 1

GENERAL PROVISIONS

14-11-100. Short title.

Law reviews. — For survey article on construction law, see 59 Mercer L. Rev. 55 (2007).

JUDICIAL DECISIONS

Cited in Sayers v. Artistic Kitchen Design, LLC, 280 Ga. App. 223, 633 S.E.2d 619 (2006).

14-11-101. Definitions.

As used in this chapter, unless the context otherwise requires, the term:

(1) "Articles of organization" means the articles filed under Code Section 14-11-203 and such articles as amended or restated.

(2) "Business entity" means a limited liability company, a foreign limited liability company, a limited partnership, a foreign limited partnership, a general partnership, a corporation, or a foreign corporation.

(3) "Conflicting interest" with respect to a limited liability company means the interest a member or manager of the limited liability company has respecting a transaction effected or proposed to be effected by the limited liability company (or by a person in which the limited liability company has a controlling interest), with respect to which the member or manager has the power to act or vote, if:

(A) Whether or not the transaction is brought before the members or managers responsible for the decision, as the case may be, of the limited liability company for action, to the knowledge of the member or manager at the time of commitment, he or she or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the member or manager or a related person that it would reasonably be expected to exert an influence on the member or manager's judgment if he or she were called upon to vote on the transaction; or

(B) The transaction is brought (or is of such character and significance to the limited liability company that it would in the normal course be brought) before the members or managers responsible for the decision, as the case may be, of the limited liability company for action and, to the knowledge of the member or manager at the time of commitment, any of the following persons is either a party to the transaction or has a beneficial financial interest so closely linked to the transaction and of such financial significance to that person that it would reasonably be expected to exert an influence on the member or manager's judgment if he or she were called upon to vote on the transaction: an entity (other than the limited liability company) of which the member or manager is a director, general partner, member, manager, agent, or employee; an entity that controls, is controlled by, or is under common control with one or more of the entities specified in the preceding clause; or an individual who is a general partner, principal, or employer of the member or manager.

(4) "Contribution" means a contribution to the capital of a limited liability company authorized by Code Section 14-11-401.

(5) "Corporation" means a corporation incorporated under Chapter 2 of this title.

(6) "Distribution" means a direct or indirect transfer of money or other property (except its own limited liability company interests) by a limited liability company to or for the benefit of its members or their assignees in respect of any of its limited liability company interests. A distribution may be in the form of a transfer of money or other property; a purchase, redemption, or other acquisition of a limited liability company interest; a distribution of indebtedness; or otherwise.

(6.1) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(7) "Event of dissociation" means an event that causes a person to cease to be a member, as provided in Code Section 14-11-601 or 14-11-601.1.

(8) "Foreign corporation" means a corporation for profit formed under the laws of a jurisdiction other than this state.

(9) "Foreign limited liability company" means a limited liability company formed under the laws of a jurisdiction other than this state.

(10) "Foreign limited partnership" means a limited partnership formed under the laws of a jurisdiction other than this state.

(11) "General partnership" means a partnership (other than a limited partnership) existing under the laws of this state or the laws of any other jurisdiction.

(12) "Limited liability company" means a limited liability company formed under this chapter.

(13) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions.

(14) "Limited partnership" means a limited partnership formed under the laws of this state.

(15) "Manager" means a person in whom management is vested in accordance with subsection (b) of Code Section 14-11-304.

(16) "Member" means a person who has been admitted to a limited liability company as a member as provided in Code Section 14-11-505

and who has not ceased to be a member as provided in Code Section 14-11-601 or 14-11-601.1.

(17) "Member or manager's conflicting interest transaction" with respect to a limited liability company means a transaction effected or proposed to be effected by the limited liability company (or by a person in which the limited liability company has a controlling interest) respecting which a member or manager of the limited liability company having the power to act or vote has a conflicting interest.

(18) "Operating agreement" means any agreement, written or oral, of the member or members as to the conduct of the business and affairs of a limited liability company. In the case of a limited liability company with only one member, a writing signed by that member stating that it is intended to be a written operating agreement shall constitute a written operating agreement and shall not be unenforceable by reason of there being only one person who is a party to the operating agreement. A limited liability company is not required to execute its operating agreement and, except as otherwise provided in the operating agreement, is bound by its operating agreement whether or not the limited liability company executes the operating agreement. An operating agreement may provide enforceable rights to any person, including a person who is not a party to the operating agreement, to the extent set forth therein.

(19) "Person" means an individual, business entity, business trust, estate, trust, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(20) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(21) "Related person" of a member or manager means:

(A) A child, grandchild, sibling, parent, or spouse of, or an individual occupying the same household as, the member or manager or a trust or estate of which an individual specified in this subparagraph is a substantial beneficiary; or

(B) A trust, estate, incompetent, conservator, or minor of which the member or manager is a fiduciary.

(22) "Required disclosure" means disclosure by the member or manager who has a conflicting interest of (A) the existence and nature of his or her conflicting interest, and (B) all facts known to him or her respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment as to whether or not to proceed with the transaction.

(23) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States.

(24) "Time of commitment" respecting a member's or manager's conflicting interest transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the limited liability company (or the person in which it has a controlling interest) becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage. (Code 1981, § 14-11-101, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1997, p. 1380, § 3; Ga. L. 1999, p. 405, § 30; Ga. L. 2002, p. 1235, § 1; Ga. L. 2009, p. 108, § 1/HB 308.)

The 2009 amendment, effective July 1, 2009, deleted "by one or more members" following "chapter" at the end of paragraph (12); and substituted the present provisions of paragraph (18) for the former provisions, which read: "'Operating agreement' means any agreement, written or oral, as to the conduct of the business and affairs of a limited liability company that is binding upon all of the members. A written operating agreement may provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the operating agreement and the provisions of the articles of organization (A) if such person (or a representative authorized by such person orally, in writing, or by other action such as payment for a limited liability company interest) executes the operating agreement or any other writing evidencing the intent of such person to become a member or assignee, or (B) without such execution, if such person (or a representative authorized by such person orally, in writing, or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the written operating agreement or any other writing and such person or representative requests in writing that the records of the limited liability company reflect such admission or assignment. In the case of a limited liability company with only one member, a writing signed by that member stating that it is intended to be a written operating agreement shall constitute a written operating agreement."

Law reviews. — For annual survey on business associations, see 61 Mercer L. Rev. 45 (2009). For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

JUDICIAL DECISIONS

Jury instruction properly given. — Jury instruction that recited the statutory definition of a member of a limited liability company as provided under O.C.G.A. §§ 14-11-101(16) and 14-11-601(b) was properly given. James E. Warren, M.D., P.C. v. Weber & Warren Anesthesia Servs., 272 Ga. App. 232, 612 S.E.2d 17 (2005).

ARTICLE 2

FORMATION

14-11-201. Purpose.

Law reviews. — For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

14-11-203. Formation.

(a) One or more persons may act as the organizer or organizers of a limited liability company by delivering articles of organization to the Secretary of State for filing and supplying to the Secretary of State, in such form as the Secretary of State may require, the following information:

(1) The name and address of each organizer;

(2) The street address and county of the limited liability company's initial registered office and the name of its initial registered agent at that office; and

(3) The mailing address of the limited liability company's principal place of business.

(b) An organizer need not be a member of the limited liability company at the time of formation or thereafter.

(c) A limited liability company is formed when the articles of organization become effective pursuant to Code Section 14-11-206.

(d) The Secretary of State's filing of the articles of organization is conclusive proof that the organizers satisfied all conditions precedent to formation, except in a proceeding by the state to cancel or revoke the formation.

(e) During any period when a limited liability company has any members it may have one or more members. (Code 1981, § 14-11-203, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 2009, p. 108, § 2/HB 308.)

The 2009 amendment, effective July 1, 2009, added subsection (e).

Law reviews. — For note, "Divorcing the Husband and Wife Business: An Analysis and Critique of I.R.C. § 761(f)," see 25 Ga. St. U.L. Rev. 1231 (2009).

JUDICIAL DECISIONS

Sole managing member's personal liability. — In a action seeking to hold a sole managing member of an LLC personally liable for a debt of an LLC, insufficient evidence was presented that the manager executed a note individually guarantying payment for the services provided by a payroll servicer, as: (1) conclu-

sive proof was presented that the LLC had met all conditions of formation at the time the contract was entered into; and (2) the agreement was specifically entered into between the servicer and the LLC, and the manager's signature appeared nowhere on the agreement. Milk v. Total Pay & HR Solutions, Inc., 280 Ga. App. 449, 634 S.E.2d 208 (2006).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to formation of limited liability company and addition or disassociation of members thereto, 43 ALR6th 611.

14-11-206. Filing by the Secretary of State.

(a) A signed original and one exact or conformed copy of any document required or permitted to be filed pursuant to this chapter shall be delivered to the Secretary of State; provided, however, that if the document is electronically transmitted, the electronic version of such person's name may be used in lieu of a signature. Unless the Secretary of State finds that the document does not conform to the filing provisions of this chapter, upon receipt of all filing fees and additional information required by law, he or she shall:

(1) Stamp or otherwise endorse his or her official title and the date and time of receipt on both the original and copy;

(2) File the original in his or her office; and

(3) Return the copy to the person who delivered the document to the Secretary of State or the person's representative.

(b) If the Secretary of State refuses to file a document, he or she shall return it to the limited liability company or its representative within ten days after the document was delivered, together with a brief written explanation of the reason for his or her refusal.

(c) The Secretary of State's duty to file documents under this chapter is ministerial.

(d) If the Secretary of State finds that any document delivered for filing does not conform to the filing provisions of this chapter at the time such document is delivered to the Secretary of State, such document is deemed to have been filed at the time of delivery (or such later time and date as is authorized by paragraph (2) of subsection (e) or subsection (f) of this Code section) if the Secretary of State subsequently determines that:

(1) The document as delivered so conforms to the filing provisions of this chapter; or

(2) Within 30 days after notification of nonconformance is given by the Secretary of State to the person who delivered the documents for

filing or that person's representative, the documents are brought into conformance.

(e) Except as provided in subsection (d) of this Code section, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(f) A document may specify a delayed effective time and date, and, if it does so, the document shall become effective at the time and date specified. If a delayed effective date but no effective time is specified, the document shall become effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date on which it is filed.

(g) A certificate attached to a copy of a document filed by the Secretary of State, bearing his or her signature, which may be in facsimile, and the printed or embossed seal of this state, or its electronic equivalent, is prima-facie evidence that the original document has been filed with the Secretary of State.

(h) Notwithstanding the provisions of this chapter, the Secretary of State may authorize the filing of documents by electronic transmission, following the provisions of Chapter 12 of Title 10, the "Uniform Electronic Transactions Act," and the Secretary of State shall be authorized to promulgate such rules and regulations as are necessary to implement electronic filing procedures. (Code 1981, § 14-11-206, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1999, p. 405, § 32; Ga. L. 2009, p. 698, § 2/HB 126.)

The 2009 amendment, effective July 1, 2009, substituted "Uniform Electronic Transactions Act" for "Georgia Electronic Records and Signatures Act" in the middle of subsection (h).

JUDICIAL DECISIONS

Formation relieved managing member of personal liability for debt. — In a action seeking to hold a sole managing member of an LLC personally liable for a debt of an LLC, insufficient evidence was presented that the manager executed a note individually guarantying payment for the services provided by a payroll servicer, as: (1) conclusive proof was presented that the LLC had met all conditions of formation at the time the contract was entered into; and (2) the agreement was specifically entered into between the servicer and the LLC, and the manager's signature appeared nowhere on the agreement. Milk v. Total Pay & HR Solutions, Inc., 280 Ga. App. 449, 634 S.E.2d 208 (2006).

14-11-209. Registered office and registered agent.

Law reviews. — For annual review of Georgia Corporation and Business Organization Law, see 15 (No. 7) Ga. St. B.J. 20 (2010).

JUDICIAL DECISIONS

Defective service. — In attempting to effect service on a limited liability company (LLC), a subcontractor's submission to the Georgia Secretary of State's Office did not comply with O.C.G.A. § 14-11-209(f) because: (1) the subcontractor failed to supply the Secretary with two copies of the process; and (2) the subcontractor failed to certify that the subcontractor forwarded the process by registered or certified mail or statutory overnight delivery to the LLC's most recent registered office listed on the Secretary's records, but that service could not be effected at such office. Anthony Hill Grading, Inc. v. SBS Invs., LLC, 297 Ga. App. 728, 678 S.E.2d 174 (2009).

Service on Secretary of State. — Homeowner's service upon a limited liability company by serving the Secretary of State was upheld based on an "Acknowledgment of Receipt" issued by the Secretary of State indicating that the Secretary had received "copies" of service documents; the use of the plural "copies" indicated that the homeowner complied with O.C.G.A. § 14-11-209(f)'s requirement that two copies be provided. Sierra-Corral Homes, LLC v. Pourreza, 308 Ga. App. 543, 708 S.E.2d 17 (2011), cert. denied, No. S11C1121, 2011 Ga. LEXIS 584 (Ga. 2011).

14-11-210. Amendment of articles of organization; restatement.

Law reviews. — For note, "Divorcing the Husband and Wife Business: An Analysis and Critique of I.R.C. § 761(f)," see 25 Ga. St. U.L. Rev. 1231 (2009).

14-11-212. Conversion to limited liability company.

(a) A corporation, foreign corporation, foreign limited liability company, limited partnership, foreign limited partnership, general partnership, or foreign general partnership may elect to become a limited liability company. Such election shall require (1) compliance with Code Section 14-2-1109.1 in the case of a Georgia corporation, or (2) the approval of all of its partners, members or shareholders (or such other approval or compliance as may be sufficient under applicable law or the governing documents of the electing entity to authorize such election) in the case of a foreign corporation, foreign limited liability company, limited partnership, foreign limited partnership, general partnership, or foreign general partnership.

(b) Such election is made by delivering a certificate of conversion to the Secretary of State for filing. The certificate shall set forth:

(1) The name and jurisdiction of organization of the entity making the election;

(2) That the entity elects to become a limited liability company;

(3) The effective date, or the effective date and time, of such election if later than the date and time the certificate of conversion is filed;

(4) That the election has been approved as required by subsection (a) of this Code section;

(5) That filed with the certificate of conversion are articles of organization that are in the form required by Code Section 14-11-204, that set forth a name for the limited liability company that satisfies the requirements of Code Section 14-11-207, and that shall be the articles of organization of the limited liability company formed pursuant to such election unless and until modified in accordance with this chapter; and

(6) A statement setting forth either (A) the manner and basis for converting the ownership interests in the entity making the election into interests as members of the limited liability company formed pursuant to such election or canceling them, or (B)(i) that a written operating agreement has been entered into among the persons who will be the members of the limited liability company formed pursuant to such election, (ii) that such operating agreement will be effective immediately upon the effectiveness of such election, and (iii) that such operating agreement provides for the manner and basis of such conversion or cancellation.

(c) Upon the election becoming effective:

(1) The electing entity shall become a limited liability company formed under this chapter by such election except that the existence of the limited liability company so formed shall be deemed to have commenced on the date the entity making the election commenced its existence in the jurisdiction in which such entity was first created, formed, incorporated, or otherwise came into being;

(2) The ownership interests in the entity making the election shall be converted or canceled on the basis stated or referred to in the certificate of conversion in accordance with paragraph (6) of subsection (b) of this Code section;

(3) The articles of organization filed with the certificate of conversion shall be the articles of organization of the limited liability company formed pursuant to such election unless and until amended in accordance with this chapter;

(4) The governing documents of the entity making the election shall be of no further force or effect;

(5) The limited liability company formed by such election shall thereupon and thereafter possess all of the rights, privileges, immu-

nities, franchises, and powers of the entity making the election; all property, real, personal, and mixed, all contract rights, and all debts due to such entity, as well as all other choses in action, and each and every other interest of or belonging to or due to the entity making the election shall be taken and deemed to be vested in the limited liability company formed by such election without further act or deed; and the title to any real estate, or any interest therein, vested in the entity making the election shall not revert or be in any way impaired by reason of such election; and none of such items shall be deemed to have been conveyed, transferred, or assigned by reason of such election for any purpose; and

(6) The limited liability company formed by such election shall thereupon and thereafter be responsible and liable for all the liabilities and obligations of the entity making the election, and any claim existing or action or proceeding pending by or against such entity may be prosecuted as if such election had not become effective. Neither the rights of creditors nor any liens upon the property of the entity making such election shall be impaired by such election.

(d) A conversion pursuant to this Code section shall not be deemed to constitute a dissolution of the entity making the election and shall constitute a continuation of the existence of the entity making the election in the form of a limited liability company. A limited liability company formed by an election pursuant to this Code section shall for all purposes be deemed to be the same entity as the entity making such election.

(e) A limited liability company formed by an election pursuant to this Code section may file a copy of such certificate of conversion, certified by the Secretary of State, in the office of the clerk of the superior court of the county where any real property owned by such limited liability company is located and record such certified copy of the certificate of conversion in the books kept by such clerk for recordation of deeds in such county with the entity electing to become a limited liability company indexed as the grantor and the limited liability company indexed as the grantee. No real estate transfer tax under Code Section 48-6-1 shall be due with respect to recordation of such election. (Code 1981, § 14-11-212, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1995, p. 470, § 16; Ga. L. 1997, p. 1380, § 4; Ga. L. 2006, p. 825, § 24/SB 469; Ga. L. 2009, p. 108, § 3/HB 308.)

The 2006 amendment, effective July 1, 2006, rewrote this Code section.

The 2009 amendment, effective July 1, 2009, in the last sentence of subsection (a), inserted "general partnership,"; in paragraph (b)(6), inserted "or canceling them" in the middle and added "or cancellation" at the end; and, in paragraph (c)(2), inserted "or canceled" near the middle.

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007). For article, "The

Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

ARTICLE 3

AGENCY; MANAGEMENT; DUTIES; LIABILITY

14-11-301. Agency of members and managers.

Law reviews. — For article, "2008 Annual Review of Case Law Development," see 14 (No. 6) Ga. St. B.J. 28 (2009).

JUDICIAL DECISIONS

Creditors failed to prove the existence of a technical trust, either by contract or by O.C.G.A. §§ 14-11-301(1), 14-11-305(1), or 23-2-58, and, as a consequence, could not prove a fiduciary defalcation by the debtors. Thus, any debt arising from the debtors' management of a limited liability company was dischargeable under 11 U.S.C. § 523(a)(4). Tarpon Point, LLC v. Wheelus (In re Wheelus), No. 07-30114-JDW, 2008 Bankr. LEXIS 348 (Bankr. M.D. Ga. Feb. 11, 2008).

Acts of a member obligated limited liability corporation. — Despite the fact that a limited liability corporation was not liable for acts of a member that were not apparently for the carrying on in the usual way the business or affairs of the corporation, because it was undisputed that the member had the authority to sign the promissory note as a guarantor, and to make draws under the loan, the member had the authority to bind the other guarantor under the note, to disburse the loan proceeds, and to withdraw loaned funds for personal use. Fielbon Dev. Co. v. Colony Bank, 290 Ga. App. 847, 660 S.E.2d 801 (2008).

As there was no statutory provision that permitted a limited liability company to bind its agents for the company's contractual obligations, a noncompetition clause in an asset purchase agreement between the company and a purchaser did not act as a bar to members of the company. Primary Invs., LLC v. Wee Tender Care III, Inc., 323 Ga. App. 196, 746 S.E.2d 823 (2013).

Limited liability company bound if other party unaware of manager's lack of authority to bind. — Summary judgment in favor of a limited liability company (LLC) in the company's action to enjoin foreclosure of the company's property by lenders was reversed because an issue of fact remained whether the LLC was bound by the actions of the LLC's manager in taking out the loan due to the borrowers' lack of knowledge that the manager lacked authority to take the loan. Under O.C.G.A. § 14-11-301(b)(2) and (d), even if the manager acted beyond the manager's authority, the LLC could still be bound if the borrowers did not know that the manager lacked such authority. Ly v. Jimmy Carter Commons, LLC, 286 Ga. 831, 691 S.E.2d 852 (2010).

Company liable for officers' actions. — Defendant company was ultimately jointly liable for actions taken by the company's officers who acted in the company's name. Jones Creek Investors, LLC v. Columbia County, No. 111-174, 2013 U.S. Dist. LEXIS 46149 (S.D. Ga. Mar. 28, 2013).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to liability of limited liability company for acts of its members, managers, officers, and agents, 46 ALR6th 1.

14-11-303. Liability to third parties.

(a) A person who is a member, manager, agent, or employee of a limited liability company is not liable, solely by reason of being a member, manager, agent, or employee of the limited liability company, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, including liabilities and obligations of the limited liability company to any member or assignee, whether arising in contract, tort, or otherwise, or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company, whether arising in contract, tort, or otherwise. Notwithstanding the provisions of this subsection, a member, manager, or employee may be personally liable for tax liabilities arising from the operation of the limited liability company as provided in Code Section 48-2-52.

(b) Notwithstanding the provisions of subsection (a) of this Code section, under a written operating agreement or under another written agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company. (Code 1981, § 14-11-303, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1997, p. 1380, § 5; Ga. L. 2001, p. 984, § 3; Ga. L. 2009, p. 108, § 4/HB 308.)

The 2009 amendment, effective July 1, 2009, inserted "including liabilities and obligations of the limited liability company to any member or assignee," in the middle of the first sentence of subsection (a).

Law reviews. — For article, "2008 Annual Review of Case Law Development," see 14 (No. 6) Ga. St. B.J. 28 (2009). For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

JUDICIAL DECISIONS

No liability of members for debt of LLC. — In a lender's suit against a limited liability company (LLC) and two individuals, it was error to find the individual defendants liable to repay the loan. The money was paid to the LLC, not to the individual defendants; even if the individuals were members of the LLC, the individuals were not liable for the LLC's obligations solely by reason of being members. Gardner v. Marcum, 292 Ga. App. 369, 665 S.E.2d 336 (2008), cert. denied, 2008 Ga. LEXIS 938 (Ga. 2008).

Members of the limited liability corporation (LLC) were not personally liable for the arbitration debts of the LLC because the members did not execute a written agreement to personally guaranty the LLC's debts and liabilities. Am. Arbitration Ass'n v. Bowen, 322 Ga. App. 51, 743 S.E.2d 612 (2013).

Noncompetition clause not binding

on members. — Noncompetition clause in parties' agreement did not bar members of a limited liability company that sold a childcare facility from opening another daycare center as the members were not parties to the agreement and were not bound thereby; further, a member's signature was as a disclosed agent. Primary Invs., LLC v. Wee Tender Care III, Inc., 323 Ga. App. 196, 746 S.E.2d 823 (2013).

Applicability. — Reliance of signatory to contribution agreement on O.C.G.A. § 14-11-303 was misplaced because signatory's liabilities arose from signatory's contractual obligations as a party to the contribution agreement and as guarantor of an employment contract, not on account of signatory's interest in a limited liability company. Ervin v. Turner, 291 Ga. App. 719, 662 S.E.2d 721 (2008), cert. denied, 2008 Ga. LEXIS 773, 774, 794 (Ga. 2008).

Cited in Winzer v. EHCA Dunwoody, LLC, 277 Ga. App. 710, 627 S.E.2d 426 (2006); Milk v. Total Pay & HR Solutions, Inc., 280 Ga. App. 449, 634 S.E.2d 208 (2006); Internal Med. Alliance, LLC v. Budell, 290 Ga. App. 231, 659 S.E.2d 668 (2008).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to liability of limited liability company for acts of its members, managers, officers, and agents, 46 ALR6th 1.

Construction and application of limited liability company acts — issues relating to personal liability of individual members and managers of limited liability company as to third parties, 47 ALR6th 1.

14-11-304. Management.

Law reviews. — For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

JUDICIAL DECISIONS

Evidence supported finding of breach of fiduciary duty. — In a direct action brought by a medical practice limited liability company member against another, sufficient evidence supported the trial court's finding that the member who remained in possession of the business failed to act in the best interest of the business and failed to exercise ordinary care when that member made the decision not to take any steps to have the exiting member's super bills processed and collected after the exiting member's departure. Given the high level of hostility and the bad blood between the parties over the operation of business, the trial court was authorized to find that the possessing member's decision was made in bad faith in an effort to negatively impact the exiting member's ownership interest in the business; therefore, the trial court was authorized to find that the possessing member breached the fiduciary duty owed to the business and the exiting member. Internal Med. Alliance, LLC v. Budell, 290 Ga. App. 231, 659 S.E.2d 668 (2008).

Member of limited liability company considered separate from company and not proper party to suit. — The trial court did not abuse the court's discretion in denying a motion to set aside a consent judgment entered against a debtor, a limited liability company, as the fact that the company's sole member did not receive notice of the complaint or approve the consent judgment was insufficient to warrant that relief as the member was considered a separate legal entity from the company. Subsection (b) of O.C.G.A. § 14-11-304 expressly recognizes that managers designated in written operating agreement "shall have such right and authority to manage the business and affairs of the limited liability company as is provided in ... a written operating agreement." Old Nat'l Villages, LLC v. Lenox Pines, LLC, 290 Ga. App. 517, 659 S.E.2d 891 (2008).

Issue of fact existed concerning control. — In spite of O.C.G.A. § 14-11-304(b)(1), a defendant's ability to appoint four managers gave the defendant de facto control of a manufacturer's eight-member board of managers, which created a genuine fact dispute as to whether the defendant was a managing member of the manufacturer and therefore owed fiduciary duties to another member. Denim N. Am. Holdings, LLC v. Swift Textiles, LLC, 816 F. Supp. 2d 1308 (M.D. Ga. 2011).

Bankruptcy filing. — Under the operating agreement and Georgia law, only the manager, with the approval of a majority in interest of the members, could have signed and filed a bankruptcy petition on behalf of the debtor. Debtor's bankruptcy petition was not properly signed by the manager of the debtor as required; thus, the case was dismissed. In re H & W Food Mart, LLC, 461 B.R. 904 (Bankr. N.D. Ga. 2011).

14-11-305. Duties.

Law reviews. — For annual survey on business associations, see 61 Mercer L. Rev. 45 (2009). For article, "2008 Annual Review of Case Law Development," see 14 (No. 6) Ga. St. B.J. 28 (2009). For annual survey of law on business associations, see 62 Mercer L. Rev. 41 (2010).

JUDICIAL DECISIONS

Summary judgment for a corporation was proper. — Pursuant to O.C.G.A. § 14-11-305, any fiduciary duties that a member of a limited liability company has may be modified or eliminated (with a few exceptions) by an operating agreement. Ledford v. Smith, 274 Ga. App. 714, 618 S.E.2d 627 (2005).

Contractual flexibility provided in O.C.G.A. § 14-11-305 is consistent with O.C.G.A. § 14-11-1107(b) of the Georgia Limited Liability Company Act, O.C.G.A. § 14-11-100 et seq., which provides that it is the policy of Georgia with respect to limited liability companies to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements. Ledford v. Smith, 274 Ga. App. 714, 618 S.E.2d 627 (2005).

Trial court properly granted summary judgment to a corporation on a limited liability company's fraud claim as: (1) the contract contained an integration clause and other representations could not be used to vary the contract; (2) the contract was more specific than the Georgia Limited Liability Partnership Act, specifically O.C.G.A. § 14-11-305(1), and the contract prevailed; (3) the contract provided that any member could engage in conflict of interest transactions, that the corporation could compete directly with the joint venture, and that the corporation had complete control of the joint venture's business; and (4) the corporation held 51 percent of the membership and could consent to a change in the joint venture's purpose or scope. Alimenta (USA), Inc. v. Oil Seed South, LLC, 276 Ga. App. 62, 622 S.E.2d 363 (2005).

Precedence of operating agreement. — Motion for a new trial by one member of limited liability company (LLC) in action among members for breach of contract, breach of fiduciary duty and other claims was properly denied, as resignation by another member from the LLC did not constitute a breach of fiduciary duty under the LLC's operating agreement or Georgia law; the remaining member failed to show that members who resigned from the LLC were prohibited from forming a competing business or soliciting customers of the LLC. James E. Warren, M.D., P.C. v. Weber & Warren Anesthesia Servs., 272 Ga. App. 232, 612 S.E.2d 17 (2005).

When owners of a limited liability company sued its co-owners for, inter alia, breach of fiduciary duty for negotiating with a third party for financing to buy out the owners' interest, the co-owners could not be held liable because O.C.G.A. § 14-11-305 provided that the company's

operating agreement governed, notwithstanding O.C.G.A. § 14-11-307, on revealing conflicting interest transactions, and that operating agreement allowed the co-owners to engage in any non-competitive activity, including negotiating with the third party. Ledford v. Smith, 274 Ga. App. 714, 618 S.E.2d 627 (2005).

Jury charge on confidential relationship. — In a suit alleging fraud, conspiracy, and conversion filed by a group of investors, as some evidence existed that a company's fundraiser misrepresented or omitted material facts concerning the benefit of a patent that the investors were requested to fund, a charge as to the law on the effect of a confidential relationship was appropriate. Argentum Int'l, LLC v. Woods, 280 Ga. App. 440, 634 S.E.2d 195 (2006).

Creditors failed to prove the existence of a technical trust, either by contract or by O.C.G.A. §§ 14-11-301(1), 14-11-305(1), or 23-2-58, and, as a consequence, could not prove a fiduciary defalcation by the debtors. Thus, any debt arising from the debtors' management of a limited liability company was dischargeable under 11 U.S.C. § 523(a)(4). Tarpon Point, LLC v. Wheelus (In re Wheelus), No. 07-30114-JDW, 2008 Bankr. LEXIS 348 (Bankr. M.D. Ga. Feb. 11, 2008).

Member could not proceed directly. — Court found it inappropriate to allow the member to proceed directly against the managing member for breach of duties under O.C.G.A. § 14-11-305. The member had not established any of the basis that would have allowed the member to proceed directly against the managing member for any violation of the managing member's duties to the limited liability company; inter alia, the member did not present any evidence of compliance with O.C.G.A. § 14-11-801. Pollitt v. McClelland (In re McClelland), No. 09-9030-WLH, 2011 Bankr. LEXIS 2224 (Bankr. N.D. Ga. June 8, 2011).

Aiding and abetting in breach of duty. — After plaintiff limited liability company (LLC1), who sold its interest in another limited liability company (LLC2) to the other members in LLC2 (buyers), and alleged that the buyers defrauded LLC1's members to sign a deed conveying real property from a related leasing company to LLC2 and that defendant financier, who financed the buyers, aided and abetted a breach of the buyers' fiduciary duty under O.C.G.A. § 14-11-305(1) in connection with that conveyance, the aiding and abetting claim failed because the conveyance had been required for LLC2 to obtain a loan from a bank, and absent the conveyance to enable LLC2 to secure the debt to the bank, the representations of the selling members in the loan application would have been false, subjecting the selling members to liability for bank fraud under 18 U.S.C. § 1344 or theft by deception under O.C.G.A. § 16-8-3. Ledford v. Peeples, 657 F.3d 1222 (11th Cir. 2011).

Evidence supported finding of breach of fiduciary duty. — In a direct action brought by a medical practice limited liability company member against another, sufficient evidence supported the trial court's finding that the member who remained in possession of the business failed to act in the best interest of the business and failed to exercise ordinary care when that member made the decision not to take any steps to have the exiting member's super bills processed and collected after the exiting member's departure. Given the high level of hostility and the bad blood between the parties over the operation of business, the trial court was authorized to find that the possessing member's decision was made in bad faith in an effort to negatively impact the exiting member's ownership interest in the business; therefore, the trial court was authorized to find that the possessing member breached the fiduciary duty owed to the business and the exiting member. Internal Med. Alliance, LLC v. Budell, 290 Ga. App. 231, 659 S.E.2d 668 (2008).

Evidence did not support finding of breach of fiduciary duty. — As a limited liability company owed no fiduciary duty to the company's members, either directly or vicariously for actions taken by the company's manager pursuant to O.C.G.A. § 14-11-305, a company officer's claim that the company breached the company's fiduciary duty when the officer was terminated and forced to sell back the

company ownership interest lacked merit, such that the company was entitled to summary judgment on that claim. ULQ, LLC v. Meder, 293 Ga. App. 176, 666 S.E.2d 713 (2008).

Financier who secretly supplied the purchase money for managing partners to buy out the corporate principals' half- interest in a carpet company did not aid and abet a breach of fiduciary duty under the Limited Liability Company Act, O.C.G.A. § 14-11-305(1), because, as a matter of law, no breach of the statute's obligations occurred. Ledford v. Peeples, 568 F.3d 1258 (11th Cir. 2009).

When plaintiffs, a corporation and the corporation's principals, alleged defendant, the financier for the managing partners of a company who bought out the corporation's interest in the company, asserted a claim that the financier aided and abetted the managing partners' breach of their duty of loyalty under O.C.G.A. § 14-11-305(1), in that the managing partners refused to convey property owned by the company to a leasing entity that was set up to hold the property and lease the property to the company, the claim failed because, as a matter of law, there was no breach of fiduciary duty: § 14-11-305 actually obligated the managing partners, as managers of the company, not to do that because if the partners had made the conveyance, the managing partners would, in effect, have given the leasing entity the part of a second bank's loan the company used to pay off the leasing entity's note to a first bank while gaining the company nothing in return, since it was contemplated that the property was to be used as collateral to secure the second bank's loan to the company. Ledford v. Peeples, 605 F.3d 871 (11th Cir. 2010).

As a denim seller was not a managing member of the parties' joint venture based on the terms of the operating agreement, the seller did not owe fiduciary duties to the manufacturer; therefore, a breach of fiduciary duty claim failed. Denim North Am. Holdings, LLC v. Swift Textiles, LLC, No. 12-11863, 2013 U.S. App. LEXIS 16499 (11th Cir. Aug. 9, 2013) (Unpublished).

Issue of fact existed concerning whether fiduciary duty was owed. — Defendant's ability to appoint four managers gave the defendant de facto control of a manufacturer's eight-member board of managers, which created a genuine fact dispute as to whether the defendant was a managing member of the manufacturer and therefore owed fiduciary duties to another member pursuant to O.C.G.A. § 14-11-305(1). Denim N. Am. Holdings, LLC v. Swift Textiles, LLC, 816 F. Supp. 2d 1308 (M.D. Ga. 2011).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to liability of limited liability company for acts of its members, managers, officers, and agents, 46 ALR6th 1.

Construction and application of limited liability company acts — issues relating to derivative actions and actions between members of limited liability company, 48 ALR6th 1.

14-11-307. Conflicting interest transactions.

JUDICIAL DECISIONS

Precedence of operating agreement. — When owners of a limited liability company sued its co-owners for, inter alia, breach of fiduciary duty for negotiating with a third party for financing to buy out the owners' interest, the co-owners could not be held liable because O.C.G.A. § 14-11-305 provided that the company's operating agreement governed, notwithstanding O.C.G.A. § 14-11-307, on revealing conflicting interest transactions, and that operating agreement allowed the co-owners to engage in any non-competitive activity, including negoti-

ating with the third party. Ledford v. Smith, 274 Ga. App. 714, 618 S.E.2d 627 (2005).

14-11-308. Approval rights of members and managers.

Law reviews. — For article, "2013 Georgia Corporation and Business Organization Case Law Developments," see 19 Ga. St. B.J. 28 (April 2014).

14-11-311. Notice.

Except as otherwise provided in the articles of organization or a written operating agreement:

(1) Notice shall be in writing unless oral notice is reasonable under the circumstances;

(2) Notice may be communicated in person; by telephone, electronic transmission, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication;

(3) Written notice to a person that is required by this title to maintain a registered agent and a registered office in this state may be, but is not required to be, addressed to its registered agent at its registered office;

(4) Written notice, if in a comprehensible form, is effective at the earliest of the following:

(A) When received, or when delivered, properly addressed, as permitted by paragraph (2) of this Code section or to the addressee's last known principal place of business or residence;

(B) Five days, or such other period as shall be provided in the articles of organization or a written operating agreement, after its deposit in the mail, as evidenced by the postmark, if mailed with first-class postage prepaid and correctly addressed to a member or manager at the address shown in the limited liability company's current record of members or managers; or

(C) On the date shown on the return receipt, if sent by registered or certified mail or statutory overnight delivery, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(5) Oral notice is effective when communicated if communicated in a comprehensible manner;

(6) In calculating time periods for notice under this chapter, when a period of time measured in days, weeks, months, years, or other

measurement of time is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted; and

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. (Code 1981, § 14-11-311, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2009, p. 108, § 5/HB 308.)

The 2009 amendment, effective July 1, 2009, substituted "electronic transmission," for "telegraph, teletype," near the beginning of the first sentence of paragraph (2).

ARTICLE 4

FINANCE

14-11-408. Liability upon wrongful distribution.

(a) A member or manager who votes for or expressly consents to a distribution that is made in violation of Code Section 14-11-407 is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating Code Section 14-11-407, if it is established that such member or manager did not act in compliance with Code Section 14-11-407 and violated a duty owed under Code Section 14-11-305 (without regard to any limitation on such duty permitted by paragraph (4) of Code Section 14-11-305).

(b) Each member or manager held liable under subsection (a) of this Code section for an unlawful distribution is entitled to contribution:

(1) From each other member or manager who could be held liable under subsection (a) of this Code section for the unlawful distribution; and

(2) From each member for the amount the member received knowing that the distribution was made in violation of Code Section 14-11-407.

(c) A proceeding under this Code section is barred unless it is commenced within two years after the date on which the effect of the distribution is measured under Code Section 14-11-407. (Code 1981, § 14-11-408, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 2009, p. 108, § 6/HB 308.)

The 2009 amendment, effective July 1, 2009, in subsection (a), deleted "the articles of organization, a written operating agreement, or" following "violation of" and deleted "the articles of organization, written operating agreement, or" following "violating"; and, in paragraph (b)(2), deleted "the articles of organization, writ-

ten operating agreement, or" preceding "Code".

ARTICLE 5

LIMITED LIABILITY COMPANY INTERESTS; ADMISSION OF MEMBERS

14-11-501. Nature of limited liability company interest.

JUDICIAL DECISIONS

Restraint on alienation. — Agreement which allowed a sanitation company that sold one of its divisions to a limited liability company (LLC) to purchase the LLC for $500,000 less than any amount offered by a third party was an unreasonable restraint on alienation. RTS Landfill, Inc. v. Appalachian Waste Sys., LLC, 267 Ga. App. 56, 598 S.E.2d 798 (2004).

Trial court erred in finding that a member of a limited liability company (LLC) owned a parking lot owned by the LLC, as a member of a limited liability company does not own property owned by the limited liability company. Collie Concessions, Inc. v. Bruce, 272 Ga. App. 578, 612 S.E.2d 900 (2005).

Cited in In re Stadler, No. 04-91944, 2005 Bankr. LEXIS 571 (Bankr. N.D. Ga. Mar. 30, 2005).

14-11-502. Assignment of limited liability company interest.

Law reviews. — For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to formation of limited liability company and addition or disassociation of members thereto, 43 ALR6th 611.

14-11-503. Rights of assignee to become member.

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to formation of limited liability company and addition or disassociation of members thereto, 43 ALR6th 611.

14-11-504. Rights of judgment creditor.

(a) On application to a court of competent jurisdiction by any judgment creditor of a member or of any assignee of a member, the court may charge the limited liability company interest of the member or such assignee with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This

chapter does not deprive any member of the benefit of any exemption laws applicable to his or her limited liability company interest.

(b) The remedy conferred by this Code section shall not be deemed exclusive of others which may exist, including, without limitation, the right of a judgment creditor to reach the limited liability company interest of the member by process of garnishment served on the limited liability company, provided that, except as otherwise provided in the articles of organization or a written operating agreement, a judgment creditor shall have no right under this chapter or any other state law to interfere with the management or force dissolution of a limited liability company or to seek an order of the court requiring a foreclosure sale of the limited liability company interest. (Code 1981, § 14-11-504, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 2009, p. 108, § 7/HB 308.)

The 2009 amendment, effective July 1, 2009, added the proviso at the end of subsection (b).

Law reviews. — For annual survey on business associations, see 61 Mercer L. Rev. 45 (2009). For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

14-11-505. Admission of members.

(a) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of:

(1) The formation of the limited liability company; or

(2) The time provided in and upon compliance with the articles of organization or a written operating agreement or, if the articles of organization and any written operating agreement do not so provide, when the person's admission is reflected in the records of the limited liability company.

(b) After the formation of a limited liability company, a person is admitted as a member of the limited liability company at the time provided in and upon compliance with the articles of organization and any written operating agreement or, if the articles of organization or a written operating agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company.

(c) An assignee is admitted as a member of the limited liability company upon compliance with paragraph (1) of Code Section 14-11-503 and at the time provided in and upon compliance with the articles of organization and any written operating agreement or, if the articles of organization or a written operating agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company; provided, however, that an assignee

shall not be admitted as a member of the limited liability company until such assignee has consented to such admission.

(d) A written operating agreement may provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the operating agreement and the provisions of the articles of organization (A) if such person (or a representative authorized by such person) executes the operating agreement or any other writing evidencing the intent of such person to become a member or assignee, or (B) without such execution, if such person (or a representative authorized by such person) complies with the conditions for becoming a member or assignee as set forth in the written operating agreement or any other writing and such person or representative requests in writing that the records of the limited liability company reflect such admission or assignment.

(e) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in a written operating agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company. Unless otherwise provided in a written operating agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a limited liability company interest in the limited liability company.

(f) In the case of a person being admitted as a member of a surviving limited liability company pursuant to a merger in accordance with Article 9 of this chapter, a person is admitted as a member of the limited liability company as provided in the operating agreement of the surviving limited liability company or in the agreement of merger, and in the event of any inconsistency, the terms of the agreement of merger shall control. In connection with the conversion into a limited liability company in accordance with Code Section 14-11-212, a person is admitted as a member of the limited liability company as provided in the limited liability company agreement. (Code 1981, § 14-11-505, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 2009, p. 108, § 8/HB 308.)

The 2009 amendment, effective July 1, 2009, in the introductory paragraph of subsection (a), deleted "acquiring a limited liability company interest" following "person"; in subsection (b), deleted "acquiring a limited liability company interest directly from the limited liability company" following "person" in the first

sentence; in subsection (c), deleted "of a limited liability company interest" following "assignee" at the beginning; and added subsections (d) through (f).

Law reviews. — For annual survey on business associations, see 61 Mercer L. Rev. 45 (2009).

JUDICIAL DECISIONS

Becoming a member. — Articles of Organization contained no provisions regarding the admission of members, and it was undisputed that there was not a written operating agreement in 2005 when the transfer was made; however, the other members of the limited liability company (LLC) consented to the person's membership in the LLC, and the person's interest in the LLC was reflected in the LLC's records via the issuance of the stock certificates and also reflected in the stock transfer ledger. Therefore, a valid LLC existed and the person became a member of the LLC when the person made the $100,000 transfer. Pollitt v. McClelland (In re McClelland), No. 09-9030-WLH, 2011 Bankr. LEXIS 2224 (Bankr. N.D. Ga. June 8, 2011).

14-11-506. Powers of estate of a deceased or incompetent member.

Except as otherwise provided in the articles of organization or a written operating agreement, if a member who is an individual dies or a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or his or her property, the member's executor, administrator, guardian, conservator, or other legal representative has all of the rights of an assignee of all of the member's limited liability company interest. Except as otherwise provided in the articles of organization or a written operating agreement, if the last member of a limited liability company dies or a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or his or her property, the member's executor, administrator, guardian, conservator, or other legal representative shall become a member of the limited liability company, unless such executor, administrator, guardian, conservator, or other legal representative elects not to become a member by written notice given to the limited liability company within 90 days of such death or adjudication (or within such other period as is provided for in a written operating agreement). (Code 1981, § 14-11-506, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 2009, p. 108, § 9/HB 308.)

The 2009 amendment, effective July 1, 2009, added the last sentence.

Law reviews. — For annual survey on business associations, see 61 Mercer L. Rev. 45 (2009).

ARTICLE 6

EVENTS OF DISSOCIATION, WITHDRAWAL, AND DISSOLUTION

Law reviews. — For survey article on business associations law, see 59 Mercer L. Rev. 35 (2007).

14-11-601. Events of dissociation.

JUDICIAL DECISIONS

Jury instruction proper. — Jury instruction that recited the statutory definition of a member of a limited liability company as provided under O.C.G.A. §§ 14-11-101(16) and 14-11-601(b) was properly given. James E. Warren, M.D., P.C. v. Weber & Warren Anesthesia Servs., 272 Ga. App. 232, 612 S.E.2d 17 (2005).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to formation of limited liability company and addition or disassociation of members thereto, 43 ALR6th 611.

14-11-601.1. Events resulting in cessation of membership.

JUDICIAL DECISIONS

Standing argument raised on appeal. — In an action seeking reorganization of an LLC, a standing argument raised by defendants was rejected on appeal, as: (1) the statute they relied on did not say that a member who sought reorganization for a different member ceased, personally, to be a member of the company; and (2) plaintiffs sought the disassociation of defendants, not of themselves. Sayers v. Artistic Kitchen Design, LLC, 280 Ga. App. 223, 633 S.E.2d 619 (2006).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to formation of limited liability company and addition or disassociation of members thereto, 43 ALR6th 611.

14-11-602. Dissolution.

(a) Effective for limited liability companies formed prior to July 1, 1999, a limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time specified in the articles of organization or a written operating agreement;

(2) Upon the happening of events specified in the articles of organization or a written operating agreement;

(3) Subject to contrary provision in the articles of organization or a written operating agreement, at a time approved by all the members;

(4) Subject to contrary provision in the articles of organization or a written operating agreement, 90 days after any event of dissociation with respect to any member (other than an event specified in paragraph (1) of subsection (b) of Code Section 14-11-601), unless within such 90 day period the limited liability company is continued by the written consent of all other members or as otherwise provided in the articles of organization or a written operating agreement; or

(5) Entry of a decree of judicial dissolution under subsection (a) of Code Section 14-11-603.

(b) Effective for limited liability companies formed on or after July 1, 1999, a limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time specified in the articles of organization or a written operating agreement;

(2) Upon the happening of events specified in the articles of organization or a written operating agreement;

(3) Subject to contrary provision in the articles of organization or a written operating agreement, at a time approved by all the members;

(4) Subject to contrary provision in the articles of organization or a written operating agreement, 90 days after an event of dissociation with respect to the last remaining member, unless otherwise provided in the articles of organization or a written operating agreement; or

(5) Entry of a decree of judicial dissolution under subsection (a) of Code Section 14-11-603.

(c) Notwithstanding paragraphs (1), (2), (3), and (4) of subsections (a) and (b) of this Code section, the limited liability company shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of termination in the office of the Secretary of State, either:

(1) The limited liability company's articles of organization or operating agreement, or both, are amended such that, after giving effect to such amendment, such event does not result in dissolution of the limited liability company pursuant to subsection (a) or (b) of this Code section; or

(2) If the limited liability company then has at least one member, a decision to continue the limited liability is taken by all of the members of the limited liability company (and all other persons, if any, with power to require dissolution of the limited liability company under its articles of organization or written operating agreement).

Any amendment or other action contemplated by paragraph (1) or (2) of this subsection shall, to the extent necessary to achieve the purposes of this subsection, be effective as of and from and after the applicable event described in subsection (a) or (b) of this Code section. (Code 1981, § 14-11-602, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1995, p. 470, § 19; Ga. L. 1999, p. 822, § 4; Ga. L. 2002, p. 1235, § 7; Ga. L. 2009, p. 108, § 10/HB 308.)

The 2009 amendment, effective July 1, 2009, in paragraphs (a)(3) and (b)(3), substituted "Subject to contrary provision in the articles of organization or a written operating agreement, at" for "At"; and added subsection (c).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to dissolution and winding up of affairs of limited liability company, 49 ALR6th 1.

14-11-603. Judicial and administrative dissolution; reservation of name.

(a) On application by or for a member, the court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or a written operating agreement. A certified copy of any such decree shall be delivered to the Secretary of State, who shall file it.

(b)(1) The Secretary of State may commence a proceeding under this subsection to dissolve a limited liability company administratively if:

(A) The limited liability company does not deliver its annual registration to the Secretary of State, together with all required fees and penalties, within 60 days after it is due;

(B) The limited liability company is without a registered agent or registered office in this state for 60 days or more;

(C) The limited liability company does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(D) The limited liability company pays a fee as required to be collected by the Secretary of State by a check or some other form of payment which is dishonored and the limited liability company or its agent does not submit payment for said dishonored payment within 60 days from notice of nonpayment issued by the Secretary of State.

(2) If the Secretary of State determines that one or more grounds exist under this subsection for dissolving a limited liability company,

he or she shall provide the limited liability company with written notice of his or her determination by mailing a copy of the notice, first-class mail, to the limited liability company at the last known address of its principal office or to the registered agent. If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is provided to the limited liability company, the Secretary of State shall administratively dissolve the limited liability company by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate.

(3) A limited liability company administratively dissolved continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs. Winding up the business of a limited liability company administratively dissolved may include, without limitation, the limited liability company proceeding, at any time after the effective date of the administrative dissolution, in accordance with Code Sections 14-11-607 and 14-11-608. The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

(4) A limited liability company administratively dissolved under this Code section may apply to the Secretary of State for reinstatement within five years after the effective date of such dissolution. The application shall:

(A) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(B) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(C) Either be executed by the registered agent or a member or manager of the limited liability company, in each case as set forth in the most recent annual registration of the limited liability company filed with the Secretary of State, or be accompanied by a notarized statement, executed by a person who was a member or manager, or an heir, successor, or assign of a person who was a member or manager, of the limited liability company at the time that the limited liability company was administratively dissolved, stating that such person or decedent was a member or manager of the limited liability company at the time of administrative dissolution and such person has knowledge of and assents to the application for reinstatement;

(D) Contain a statement by the limited liability company reciting that all taxes owed by the limited liability company have been paid; and

(E) Be accompanied by the fee required for the application for reinstatement contained in Code Section 14-11-1101.

If the Secretary of State determines that the application contains the information required by this paragraph and that the information is correct, he or she shall prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited liability company. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the limited liability company resumes carrying on its business as if the administrative dissolution had never occurred.

(5) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, he or she shall serve the limited liability company with a written notice that explains the reason or reasons for denial. The limited liability company may appeal the denial of reinstatement to the superior court of the county where the limited liability company's registered office is or was located within 30 days after service of the notice of denial is perfected. The limited liability company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the limited liability company's application for reinstatement, and the Secretary of State's notice of denial. The court's final decision may be appealed as in other civil proceedings.

(6) The Secretary of State shall reserve the name of a limited liability company administratively dissolved under Code Section 14-2-1421 for such limited liability company's specific use for a period of five years after the effective date of the dissolution or until the limited liability company is reinstated, whichever is sooner. (Code 1981, § 14-11-603, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1999, p. 405, § 34; Ga. L. 2008, p. 253, §§ 12, 13/SB 436; Ga. L. 2011, p. 430, § 7/SB 64.)

The 2008 amendment, effective July 1, 2008, in paragraph (b)(4), in the introductory language, added "within five years after the effective date of such dissolution" at the end of the first sentence, and substituted "shall" for "must" at the end; substituted the present provisions of subparagraph (b)(4)(C) for the former provisions, which read: "State that the limited liability company's name satisfies the requirements of Code Section 14-11-207"; inserted a comma following "effective date of the administrative dissolution" in the concluding paragraph of paragraph (b)(4); and added paragraph (b)(6).

The 2011 amendment, effective July 1, 2011, in subparagraph (b)(4)(E), deleted "an amount equal to the total annual registration fees and penalties that would have been payable during the periods between dissolution and reinstatement, plus" following "Be accompanied by" and substituted "contained in Code Section 14-11-1101" for ", and any other fees and penalties payable for earlier periods" at the end.

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008). For article, "2008 Annual Review of Case Law Development," see 14 (No. 6) Ga. St. B.J. 28 (2009). For article, "Business Associations," see 63 Mercer L. Rev. 83 (2011).

JUDICIAL DECISIONS

Dissolution proper. — Given that parties agreed that a limited liability company should be dissolved, it was proper for trial court to conclude that it was not reasonably practicable to carry on the business under O.C.G.A. § 14-11-603 and to dissolve the company. Ervin v. Turner, 291 Ga. App. 719, 662 S.E.2d 721 (2008), cert. denied, 2008 Ga. LEXIS 773, 774, 794 (Ga. 2008).

Receiver appointed. — After proceedings for dissolution of a limited liability company (LLC) were brought under O.C.G.A. § 14-11-603, the trial court properly appointed a neutral receiver to manage the affairs of the LLC during the pendency of further proceedings. The parties, who each owned half shares in the LLC, could not agree about the management of the LLC and its financial affairs, and even when accountants were hired to conduct an audit of the LLC, a meaningful accounting could not be done because the parties provided conflicting, incomplete, and inconsistent information to the accountants. Ga. Rehab. Ctr., Inc. v. Newnan Hosp., 283 Ga. 335, 658 S.E.2d 737 (2008).

Arbitration. — The dissolution of a limited liability company (LLC) did not have to be submitted to arbitration under the LLC's operating agreement. None of the events named in the agreement formed the basis for the dissolution; rather, the dissolution proceedings were commenced by one of the LLC's two co-owners under O.C.G.A. § 14-11-603. Ga. Rehab. Ctr., Inc. v. Newnan Hosp., 283 Ga. 335, 658 S.E.2d 737 (2008).

Request by two of a limited liability company's three members for judicial dissolution of the company pursuant to O.C.G.A. § 14-11-603 was not a claim arising out of, in connection with, or relating to the operating agreement or any breach thereof and therefore was not required to be arbitrated under the agreement. The third member's failure to call or attend meetings as provided in the operating agreement was more than a formality and the trial court did not err in dissolving the company. Simmons Family Props., LLLP v. Shelton, 307 Ga. App. 361, 705 S.E.2d 258 (2010).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to dissolution and winding up of affairs of limited liability company, 49 ALR6th 1.

14-11-610. Certificate of termination.

A dissolved limited liability company may deliver to the Secretary of State for filing a certificate of termination when the statements required to be included therein can be truthfully made. Such a certificate of termination shall set forth:

(1) The name of the limited liability company;

(2) That all known debts, liabilities, and obligations of the limited liability company have been paid, discharged, or barred or that adequate provision has been made therefor; and

(3) That there are no actions pending against the limited liability company in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending action. (Code 1981, § 14-11-610, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1999, p. 405, § 35; Ga. L. 2009, p. 108, § 11/HB 308.)

The 2009 amendment, effective July 1, 2009, substituted "may deliver" for "shall deliver" near the beginning of the first sentence of the introductory paragraph.

Law reviews. — For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

ARTICLE 7

FOREIGN LIMITED LIABILITY COMPANIES

14-11-702. Requirement for certificate of authority; application; activities not considered transacting business in this state.

JUDICIAL DECISIONS

Not transacting business. — Trial court did not err by denying a mortgagor's motion to dismiss the foreclosure confirmation proceeding based on the mortgagee being a foreign limited liability company impermissibly transacting business in Georgia because a limited liability company was not considered to be transacting business in Georgia merely because it engaged in acquiring loan documents, conducting a foreclosure sale, purchasing the property at the sale, reporting the sale, and filing the confirmation petition. Powder Springs Holdings, LLC v. RL BB ACQ II-GA PSH, LLC, 325 Ga. App. 694, 754 S.E.2d 655 (2014).

14-11-706. Amended certificate required for change of name or jurisdiction of organization; foreign limited liability company converting to foreign limited partnership or foreign corporation.

(a) A foreign limited liability company authorized to transact business in this state must procure an amended certificate of authority from the Secretary of State if it changes its name or its jurisdiction of organization. The requirements of Code Sections 14-11-702 and 14-11-704 for procuring an original certificate of authority shall apply to procuring an amended certificate under this Code section.

(b) If a foreign limited liability company authorized to transact business in this state converts into a foreign limited partnership:

(1) The foreign limited liability company shall notify the Secretary of State that such conversion has occurred no later than 30 days after the conversion, using such form as the Secretary of State shall

specify, which form may require such information and statements as may be required to be submitted by a foreign limited partnership that applies for a certificate of authority to transact business in this state; and

(2) If such notice is timely given:

(A) The authorization of such entity to transact business in this state shall continue without interruption; and

(B) The certificate of authority issued to such foreign limited liability company under this article shall constitute a certificate of authority issued under Code Section 14-11-903 to the foreign limited partnership resulting from the conversion effective as of the date of the conversion.

The Secretary of State shall adjust its records accordingly.

(c) If a foreign limited liability company authorized to transact business in this state converts into a foreign corporation:

(1) The foreign limited liability company shall notify the Secretary of State that such conversion has occurred no later than 30 days after the conversion, using such form as the Secretary of State shall specify, which form may require such information and statements as may be required to be submitted by a foreign corporation that applies for a certificate of authority to transact business in this state; and

(2) If such notice is timely given:

(A) The authorization of such entity to transact business in this state shall continue without interruption; and

(B) The certificate of authority issued to such foreign limited liability company under this article shall constitute a certificate of authority issued under Code Section 14-2-1501 to the foreign corporation resulting from the conversion effective as of the date of the conversion.

The Secretary of State shall adjust its records accordingly. (Code 1981, § 14-11-706, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 2006, p. 825, § 25/SB 469.)

The 2006 amendment, effective July 1, 2006, designated the previously existing provisions of this Code section as subsection (a); and added subsections (b) and (c).

14-11-711. Failure of company to procure certificate; effect; penalty.

JUDICIAL DECISIONS

Not transacting business. — Trial court did not err by denying a mortgagor's motion to dismiss the foreclosure confirmation proceeding based on the mortgagee being a foreign limited liability company impermissibly transacting business in Georgia because a limited liability company was not considered to be transacting business in Georgia merely because it engaged in acquiring loan documents, conducting a foreclosure sale, purchasing the property at the sale, reporting the sale, and filing the confirmation petition. Powder Springs Holdings, LLC v. RL BB ACQ II-GA PSH, LLC, 325 Ga. App. 694, 754 S.E.2d 655 (2014).

ARTICLE 8

DERIVATIVE ACTIONS

14-11-801. Right of member to bring derivative action.

JUDICIAL DECISIONS

Standing. — When owners and co-owners of a limited liability company mistakenly signed a deed transferring real estate from the entity that owned it to the company, the owners had standing to bring a derivative suit on behalf of the entity that had owned the property, seeking its reconveyance, as they satisfied the requirements of O.C.G.A. § 14-11-801, but the owners' separate company did not have such standing because it had no ownership interest in the company that had owned the property or in the property itself. Ledford v. Smith, 274 Ga. App. 714, 618 S.E.2d 627 (2005).

Plaintiff, the debtor's former business partner, had standing to bring a dischargeability claim because a state court judgment showed a particularized injury caused by the debtor and the claim passed the prudential threshold in that the claim was a specific private action brought pursuant to O.C.G.A. § 14-11-801. Silver v. Edelson (In re Edelson), No. 11-05720-BEM, 2013 Bankr. LEXIS 3909 (Bankr. N.D. Ga. July 3, 2013).

Member could not proceed directly. — Court found it inappropriate to allow the member to proceed directly against the managing member for breach of duties under O.C.G.A. § 14-11-305. The member had not established any of the basis that would have allowed the member to proceed directly against the managing member for any violation of the managing member's duties to the limited liability company; inter alia, the member did not present any evidence of compliance with O.C.G.A. § 14-11-801. Pollitt v. McClelland (In re McClelland), No. 09-9030-WLH, 2011 Bankr. LEXIS 2224 (Bankr. N.D. Ga. June 8, 2011).

Failure to make a formal demand. — Trial court correctly dismissed a derivative action due to the failure to make a formal demand upon the limited liability company, pursuant to O.C.G.A. § 14-11-801, to bring the suit itself, and no futility exception was available. Pinnacle Benning, LLC v. Clark Realty Capital, LLC, 314 Ga. App. 609, 724 S.E.2d 894 (2012).

Cited in Internal Med. Alliance, LLC v. Budell, 290 Ga. App. 231, 659 S.E.2d 668 (2008).

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to derivative actions and actions between members of limited liability company, 48 ALR6th 1.

14-11-802. Complaint.

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to derivative actions and actions between members of limited liability company, 48 ALR6th 1.

14-11-803. Stay of proceedings.

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to derivative actions and actions between members of limited liability company, 48 ALR6th 1.

14-11-804. Discontinuance or settlement.

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to derivative actions and actions between members of limited liability company, 48 ALR6th 1.

14-11-805. Dismissal.

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to derivative actions and actions between members of limited liability company, 48 ALR6th 1.

14-11-806. Expenses.

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to derivative actions and actions between members of limited liability company, 48 ALR6th 1.

14-11-807. Applicability to foreign limited liability companies.

RESEARCH REFERENCES

ALR. — Construction and application of limited liability company acts — issues relating to derivative actions and actions between members of limited liability company, 48 ALR6th 1.

ARTICLE 9

MERGER

14-11-901. Merger.

(a) Pursuant to a written agreement, which, unless otherwise provided therein, will constitute the plan of merger required by Code Section 14-11-902 if it contains the provisions required by that Code section, a limited liability company may merge with or into one or more business entities with such limited liability company or other business entity as the agreement shall provide being the surviving limited liability company or other business entity.

(b) In the case of a merger involving a foreign limited liability company, foreign limited partnership, or foreign corporation, the merger may take place if:

(1) The merger is permitted by the law of the state or jurisdiction under whose laws each foreign constituent entity is organized or formed and each foreign constituent entity complies with that law in effecting the merger;

(2) The foreign constituent entity complies with Code Section 14-11-904 if it is the surviving entity of the merger; and

(3) Each limited liability company complies with the applicable provisions of this Code section, Code Sections 14-11-902 and 14-11-903, and, if it is the surviving entity, with Code Section 14-11-904. (Code 1981, § 14-11-901, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1994, p. 97, § 14; Ga. L. 1995, p. 470, § 21; Ga. L. 2009, p. 108, § 12/HB 308.)

The 2009 amendment, effective July 1, 2009, inserted ", which, unless otherwise provided therein, will constitute the plan of merger required by Code Section 14-11-902 if it contains the provisions required by that Code section" near the beginning of subsection (a).

Law reviews. — For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

14-11-905. Effects of merger.

(a) If the surviving entity is a limited liability company, when a merger takes effect:

(1) Every other constituent business entity party to the merger merges into the limited liability company designated in the plan of merger as the surviving entity;

(2) The separate existence of each constituent business entity party to the plan of merger except the surviving limited liability company shall cease;

(3) The title to all real estate and other property owned by each constituent business entity is vested in the surviving limited liability company without reversion or impairment;

(4) The surviving limited liability company has all the liabilities of each constituent business entity;

(5) A proceeding pending against any constituent business entity may be continued as if the merger did not occur or the surviving limited liability company may be substituted in the proceeding for the constituent business entity whose existence ceased;

(6) Neither the rights of creditors nor any liens on the property of any constituent business entity shall be impaired by the merger;

(7) The articles of organization of the surviving limited liability company shall be amended to the extent provided in the articles of merger; and

(8) The interests or shares in each merging constituent business entity that are to be converted into interests of the surviving limited liability company, or into cash or other property under the terms of the plan of merger, or cancelled, are so converted or cancelled, and the former holders thereof are entitled only to the rights provided in the plan of merger or their rights otherwise provided by law.

(b) If the surviving business entity is to be governed by the laws of any jurisdiction other than this state, the effects of merger shall be the same as provided in this Code section, except insofar as the laws of such other jurisdiction provide otherwise.

(c) Nothing in this article shall abridge or impair any dissenters' or appraisal rights that may otherwise be available to the members or shareholders or other holders of an interest in any constituent business entity.

(d) A foreign business entity authorized to transact business in this state that merges with and into a limited liability company pursuant to

this chapter and is not the surviving entity in such merger need not obtain a certificate of withdrawal from the Secretary of State. (Code 1981, § 14-11-905, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1995, p. 470, § 23; Ga. L. 2009, p. 108, § 13/HB 308.)

The 2009 amendment, effective July 1, 2009, substituted "articles" for "plan" near the end of paragraph (a)(7); and, in paragraph (a)(8), inserted "or cancelled," and inserted "or cancelled".

Law reviews. — For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

14-11-906. Election by a limited liability company to become a foreign limited liability company, a foreign limited partnership, or a foreign corporation; certificate of authority; requirements.

(a) A limited liability company may elect to become a foreign limited liability company, a foreign limited partnership, or a foreign corporation, if such a conversion is permitted by the law of the state or jurisdiction under whose law the resulting entity would be formed.

(b) To effect a conversion under this Code section, the limited liability company must adopt a plan of conversion that sets forth the manner and basis of converting the interests of the members of the limited liability company into interests, shares, obligations, or other securities, as the case may be, of the resulting entity. The plan of conversion may set forth other provisions relating to the conversion.

(c) The limited liability company shall have the plan of conversion authorized and approved by the unanimous consent of the members, unless the articles of organization or a written operating agreement of such limited liability company provides otherwise.

(d) After a conversion is authorized, unless the plan of conversion provides otherwise, and at any time before the conversion has become effective, the planned conversion may be abandoned, subject to any contractual rights, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, by the unanimous consent of the members of the limited liability company, unless the articles of organization or a written operating agreement of such limited liability company provides otherwise.

(e) The conversion shall be effected as provided in, and shall have the effects provided by, the law of the state or jurisdiction under whose law the resulting entity is formed and by the plan of conversion, to the extent not inconsistent with such law.

(f) If the resulting entity is required to obtain a certificate of authority to transact business in this state by the provisions of this title

governing foreign corporations, foreign limited partnerships, or foreign limited liability companies, it shall do so.

(g) After a plan of conversion is approved by the members, the limited liability company shall deliver to the Secretary of State for filing a certificate of conversion setting forth:

(1) The name of the limited liability company;

(2) The name and jurisdiction of the entity to which the limited liability company shall be converted;

(3) The effective date, or the effective date and time, of such conversion if later than the date and time the certificate of conversion is filed;

(4) A statement that the plan of conversion has been approved as required by subsection (c) of this Code section;

(5) A statement that the authority of its registered agent to accept service on its behalf is revoked as of the effective time of such conversion and that the Secretary of State is irrevocably appointed as the agent for service of process on the resulting entity in any proceeding to enforce an obligation of the limited liability company arising prior to the effective time of such conversion, including the rights, if any, of dissenting members;

(6) A mailing address to which a copy of any process served on the Secretary of State under paragraph (5) of this subsection may be mailed; and

(7) A statement that the Secretary of State shall be notified of any change in the resulting entity's mailing address.

(h) Upon the conversion's taking effect, the resulting entity is deemed:

(1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any of its obligations arising prior to the effective time of such conversion, including the rights, if any, of dissenting members; and

(2) To agree that it will promptly pay to any dissenting members the amount, if any, to which such member is entitled under Article 10 of this chapter.

(i) A converting limited liability company pursuant to this Code section may file a copy of its certificate of conversion, certified by the Secretary of State, in the office of the clerk of the superior court of the county where any real property owned by such limited liability company is located and record such certified copy of the certificate of conversion in the books kept by such clerk for recordation of deeds in

such county with the limited liability company indexed as the grantor and the foreign entity indexed as the grantee. No real estate transfer tax otherwise required by Code Section 48-6-1 shall be due with respect to recordation of such certificate of conversion. (Code 1981, § 14-11-906, enacted by Ga. L. 2006, p. 825, § 26/SB 469; Ga. L. 2007, p. 455, § 5/SB 234.)

Effective date. — This Code section became effective July 1, 2006.

The 2007 amendment, effective July 1, 2007, added subsections (g) through (i).

ARTICLE 10

DISSENTERS' RIGHTS

14-11-1002. Right to dissent.

(a) Unless otherwise provided by the articles of organization or a written operating agreement, a record member of the limited liability company is entitled to dissent from, and obtain payment of the fair value of his or her membership interest in the event of, any of the following actions:

(1) Consummation of a plan of merger to which the limited liability company is a party if approval of less than all of the members of the limited liability company is required for the merger by the articles of organization or a written operating agreement and the member is entitled to vote on the merger;

(2) Consummation of a plan of conversion pursuant to Code Section 14-2-1109.2 or 14-11-906;

(3) Consummation of a sale, lease, exchange, or other disposition of all or substantially all of the property of the limited liability company if approval of less than all of the members is required by the articles of organization or a written operating agreement and the member is entitled to vote on the sale, lease, exchange, or other disposition, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the members within one year after the date of sale;

(4) An amendment of the articles of organization that materially and adversely affects rights in respect of a dissenter's membership interest in the limited liability company because it:

(A) Alters or abolishes a preferential right of the member's interest;

(B) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the membership interest;

(C) Alters or abolishes a preemptive right of the holder of the membership interest to acquire additional interest or other securities;

(D) Excludes or limits the right of the member to vote on any matter, other than a limitation by dilution through additional member contributions or other securities with similar voting rights; or

(E) Cancels, redeems, or repurchases all or part of the membership interest of the class; or

(5) Any limited liability company action taken pursuant to a member vote to the extent that the articles of organization or a written operating agreement provides that voting or nonvoting members are entitled to dissent and obtain payment for their membership interests.

(b) A member entitled to dissent and obtain payment for his or her membership interest under this article may not challenge the limited liability company action creating his or her entitlement unless the limited liability company action fails to comply with procedural requirements of this chapter, the articles of organization, or the written operating agreement or if the vote required to obtain approval of the limited liability company action was obtained by fraudulent and deceptive means, regardless of whether the member has exercised dissenters' rights. (Code 1981, § 14-11-1002, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 2006, p. 825, § 28/SB 469.)

The 2006 amendment, effective July 1, 2006, added paragraph (a)(2); and redesignated former paragraphs (a)(2) through (a)(4) as present paragraphs (a)(3) through (a)(5).

Law reviews. — For article, "2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes," see 12 Ga. St. B.J. 12 (2007).

ARTICLE 11

MISCELLANEOUS

14-11-1101. Filing fees and penalties.

(a) The Secretary of State shall collect the following fees when the documents described below are delivered to the Secretary of State for filing pursuant to this chapter:

Document	Fee
(1) Articles of organization	$ 100.00
(2) Articles of amendment	20.00

Document	Fee
(3) Articles of merger	20.00
(4) Certificate of election under Code Section 14-11-212 (together with articles of organization)	95.00
(5) Application for certificate of authority to transact business	225.00
(6) Statement of commencement of winding up	No fee
(7) Certificate of termination	No fee
(8) Application of withdrawal	No fee
(9) Articles of correction	20.00
(10) Application for reservation of a name	25.00
(11) Statement of change of registered office or registered agent ...$ 5.00 per limited liability company (foreign or domestic), but not less than	20.00
(12) Registered agent's statement of resignation pursuant to subsection (d) of Code Section 14-11-209 or subsection (d) of Code Section 14-11-703	No fee
(13) Certificate of judicial dissolution	No fee
(14) Annual registration (foreign or domestic)	50.00
(15) Penalty for late filing of annual registration	25.00
(16) Reinstatement fee	250.00
(17) Any other document required or permitted to be filed by this chapter	20.00
(18) Certificate of conversion	95.00

(b) The Secretary of State shall collect the penalty provided for in paragraph (2) of subsection (c) of Code Section 14-11-711. (Code 1981, § 14-11-1101, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1999, p. 405, § 36; Ga. L. 2003, p. 883, § 8; Ga. L. 2006, p. 825, § 27/SB 469; Ga. L. 2007, p. 455, § 6/SB 234; Ga. L. 2008, p. 253, § 14/SB 436; Ga. L. 2010, p. 9, § 1-37/HB 1055; Ga. L. 2011, p. 430, § 8/SB 64.)

The 2006 amendment, effective July 1, 2006, added paragraph (a)(16).

The 2007 amendment, effective July 1, 2007, substituted "Certificate of conversion" for "All foreign entity conversions" in paragraph (a)(16).

The 2008 amendment, effective July 1, 2008, in paragraphs (a)(6) and (a)(7), substituted "No Fee" for "20.00"; added paragraph (a)(8); redesignated former paragraphs (a)(8) through (a)(13) as present paragraphs (a)(9) through (a)(14), re-

spectively; added present paragraph (a)(15); and redesignated former paragraphs (a)(14) through (a)(16) as present paragraphs (a)(16) through (a)(18), respectively.

The 2010 amendment, effective May 12, 2010, in subsection (a), substituted "fee" for "Fee" in paragraphs (a)(6) and (a)(7) and substituted "50.00" for "30.00" in paragraph (a)(14).

The 2011 amendment, effective July 1, 2011, substituted "250.00" for "100.00" in paragraph (a)(16).

14-11-1103. Annual registration.

Law reviews. — For article, "Post-Creation Checklist for Georgia Business Entities," see 9 Ga. St. B.J. 24 (2004).

14-11-1107. Laws governing chapter; limited liability companies.

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) It is the policy of this state with respect to limited liability companies to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

(c) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(d) If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application. To this end, the provisions of this chapter are severable.

(e) A limited liability company may conduct its business, carry on its operations and have and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country.

(f) The laws of this state relating to establishment and regulation of professional services are amended and superseded to the extent such laws are inconsistent as to form of organization with the provisions of this chapter and are deemed amended to permit the provision of professional services within this state by limited liability companies.

(g) Nothing in this chapter is intended to restrict or limit in any manner the authority and duty of any regulatory or other body licensing professionals within this state to license individuals rendering professional services or to regulate the practice of any profession that is within the jurisdiction of the regulatory or other body licensing such professionals within this state, notwithstanding that the person is a member, manager, or employee of a limited liability company and

rendering the professional services or engaging in the practice of the profession through a limited liability company.

(h) The personal liability of a member of a limited liability company to any person or in any action or proceeding for the debts, obligations, or liabilities of the limited liability company, or for the acts or omissions of other members, managers, employees, or agents of the limited liability company, shall be governed solely and exclusively by this chapter and the laws of this state. Whenever a conflict arises between the laws of this state and the laws of any other state with regard to the liability of members of a limited liability company for the debts, obligations, and liabilities of the limited liability company or for the acts or omissions of other members, managers, employees, or agents of the limited liability company, this state's laws shall be deemed to govern in determining such liability.

(i) The provisions of this chapter shall determine the rights and obligations of a limited liability company organized under this chapter in commerce with foreign nations and among the several states to the extent permitted by law.

(j) A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, solely by reason of being a member of the limited liability company, except:

(1) Where the object of the proceeding is to enforce a member's right against or liability to the limited liability company; or

(2) In a derivative action authorized by Article 8 of this chapter.

(k) The General Assembly has power to amend or repeal all or part of this chapter at any time, and all limited liability companies and foreign limited liability companies subject to this chapter are governed by the amendment or repeal.

(l) Any provision that this chapter requires or permits to be set forth in an operating agreement may be set forth in the articles of organization. In the event of any conflict between a provision of the articles of organization and a provision of an operating agreement, the provision of the articles of organization shall govern.

(m) Each provision of this chapter shall have independent legal significance.

(n) Nothing in this chapter shall be construed as establishing that a limited liability company interest is not a "security" within the meaning of paragraph (31) of Code Section 10-5-2 (or any successor statute). (Code 1981, § 14-11-1107, enacted by Ga. L. 1993, p. 123, § 1; Ga. L. 1994, p. 97, § 14; Ga. L. 2008, p. 381, § 8/SB 358.)

The 2008 amendment, effective July 1, 2009, substituted "paragraph (31)" for "paragraph (26) of subsection (a)" in subsection (n).

Law reviews. — For article, "The Georgia LLC Act Comes of Age," see 16 (No. 1) Ga. St. B.J. 20 (2010).

JUDICIAL DECISIONS

Limited liability companies.

Contractual flexibility provided in O.C.G.A. § 14-11-305 is consistent with O.C.G.A. § 14-11-1107(b) of the Georgia Limited Liability Company Act, O.C.G.A. § 14-11-100 et seq., which provides that it is the policy of Georgia with respect to limited liability companies to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements. Ledford v. Smith, 274 Ga. App. 714, 618 S.E.2d 627 (2005).

Cited in Ledford v. Peeples, 568 F.3d 1258 (11th Cir. 2009).

14-11-1108. Service of process; venue.

JUDICIAL DECISIONS

Motion for remand properly denied. — Teenager's motion to remand was properly denied as: (1) a police officer was the only defendant who resided in Toombs County; (2) venue in Toombs County "vanished" when the officer was granted summary judgment, so the teenager could not rely on the joint tortfeasor venue provision of the Georgia Constitution; (3) the newspaper defendants did not have an office in Toombs County so as to preclude venue there pursuant to O.C.G.A. § 14-2-510(b)(3); (4) although the newspaper defendants transacted business in Toombs County, they did not maintain an office there; and (5) venue was not properly based on O.C.G.A. § 14-11-1108(b), even though some defendants were limited liability companies. Torrance v. Morris Publ'g Group, LLC, 281 Ga. App. 563, 636 S.E.2d 740 (2006), cert. denied, 2007 Ga. LEXIS 160 (Ga. 2007).